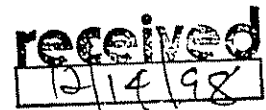


11-23

LINDA MOIOLA  
549 Marilyn Ave.  
Brawley, CA 92227  
(760) 351-0322



December 8, 1998

State Water Resources Control Board  
Attn: Richard Satkowski  
PO Box 2000, 901 P St.  
Sacramento, CA 95812-2000

Dear Mr. Satkowski:

This letter is being written to protest the proposed Water Transfer between the Imperial Irrigation District and San Diego County Water Authority. As a resident of Imperial Valley for over 22 years (21 of them being married to a farmer) I am opposed to this transfer.

There are those who believe they are entitled to whatever they want, and they will go to any lengths to get it. The sentiment seems to be "we have the population--we control the votes--whether you like it or not!". The fact that the San Diego County Water Authority considered "eminent domain" as a possible means of acquiring property and thereby water rights, is evidence of this sentiment.

Everyone talks about how much water is wasted by the Imperial Irrigation District but no one questions how much is wasted in Los Angeles (i.e., water rushing straight out to the ocean via the Los Angeles River instead of being saved). When the Los Angeles River was built (as a storm drain), why wasn't a reservoir built to store the water? Of course, they say it would be too expensive to build one now. How much water is used in Los Angeles, San Diego and other cities as the population increases and they build thousands of new homes, swimming pools, golf courses and shopping malls knowing they don't have enough water to support the growth. The state of California has been told it must live within its allocated water entitlement; why does it seem like the people living in the Imperial Valley are the only ones expected to conserve?

The proposed water transfer dealings have been fraught with deceit, lies and possibly fraud as well as a breach of fiduciary responsibility on the part of the (then) IID Board with the exception of Director Don Cox. The following are some of the facts as well as my observations and opinions. I seriously question whether the IID Board was looking out for the best interests of the Imperial Valley and our water rights. I am also concerned because the negotiations seem to have been conducted through manipulative and deceptive methods.

Background On Some Of The Parties Involved:

1. Michael Clinton, General Manager for the Imperial Irrigation District was hired in May, 1995 in a process that the 1995-96 Imperial County Grand Jury considered to be "seriously flawed". They also questioned the "undue influence" that the Bass Brothers had over the IID Board. He was hired shortly after Western Farms (owned by the Bass Brothers) began purchasing large quantities of land in the Imperial Valley. Prior to being appointed as the IID General Manager, Clinton was a partner for a firm (Bookman-Edmonston Engineering) which was retained by Western Farms.

2. Dilda McFadden was a recent (unsuccessful) candidate for the IID Board, before that he was a consultant for Western Farms for 3 years.
3. In November 1997, U.S. Filter Corp bought land (about 42,000 acres in Imperial Valley) from Western Farms in a stock deal worth \$274 million which was about \$100 million more than Western Farms paid for the land. The transaction made the Bass brothers a major stockholder in U.S. Filter Corp and the land purchased by U.S. Filter remains in Western Farms name. Additionally, U.S. Filter supports the water transfer and is currently conducting a test program in which they will clean water obtained from the Alamo River (created by agricultural runoff). They envision selling the recycled water for about \$200 an acre foot to the IID and the IID in turn, would be able to resell this water for about \$300 an acre foot.

Richard Heckmann, President and Chief Executive Officer, was quoted in the 7/2/98 issue of the IV Press as saying his company would have nothing to do with fallowing. He then went on to state "Our purchase of that land was **never, ever based on the ability to sell water.**" (As stated in the above paragraph, they certainly **do plan to sell water!**) When he was asked if he or his board of directors knew anything about the the proposed Western Farms plan he said "No, absolutely not, absolutely not. Never once in the negotiations with the Bass brothers, any of their people or Ardon Moore was there any discussion of fallowing the land to sell the water." (As noted in the following paragraph, Ardon currently is a member on U.S. Filter's Board of Directors!)

4. Ardon Moore (who is mentioned in the documents as having discussed Western Farm's plans to sell water to SDCWA) is currently a member of the Board of Directors of U.S. Filter. Previously, he served as President for Western Farms.

#### History, Facts and Other Issues Surrounding Water Transfer Deal:

1. When people voiced major concerns and questioned the proposed water transfer, the IID announced it would hold public meetings to discuss the deal. It seems unlikely that the Board of directors except for Don Cox, gave any merit or consideration to the public's input and suggestions that the IID slow the negotiations down until further research was done and questions were answered. Despite these concerns being repeatedly voiced at the public meetings the IID quickly approved the transfer. It appeared that their minds were already made up and the meetings were held merely to pacify the public.
2. I am not an attorney, therefore I can't say for sure that laws were broken before or during the negotiations, but I have doubts about the IID Board's actions. In addition, the intentions and actions of SDCWA, Western Farms, the Bass Brothers and U.S. Filter while possibly not illegal seem a bit unethical. Please consider the following:
  - a. When the Imperial Valley Press published information detailing documents which were obviously not intended for the public's eyes, (especially those living in the Imperial Valley), Michael Clinton's initial reaction was to refrain from reading these documents because someone at

SDCWA asked him not to read them. He stated that "it would contribute to the loss of attorney-client privilege and confidentiality". This confidentiality had **already been lost and his reading the documents would not have changed that fact**. According to an article in the IV Press (6/30/98) he stated he "was retained by Western Farms in my prior life, and I was aware that they had retained legal counsel on this subject, yes...My firm was ...retained by Western Farms".

Unless he is trying to say he was re-incarnated and at the moment of re-birth, he lost all prior memories of having worked for Western Farms in any capacity, it seems that he had a legal as well as moral obligation to inform the IID Board and the public about what he knew. At the very least, he should have excused himself from **all negotiations** surrounding the transfer as a possible **conflict of interest**.

- b. The authenticity of these documents has never been questioned by those involved but damage control began immediately after the information was made public. SDCWA contacted the IV Press requesting that they not publish anything based on the contents of the documents. The Press declined saying they had an obligation to the public (their readers) and that the public had the right to know what was going on **behind** the scenes as well as in public meetings.

SDCWA Chairwoman Christine Frahm (to whom the documents were addressed) has stated that 1) SDCWA had a responsibility to its customers to explore all approaches in its pursuit to obtain water...the contact with Western Farms was just another look at alternate water supplies...they ultimately chose the transaction that seems to work best...positive for the two communities; 2) that leaking these documents was "a desperate act by a desperate party, calculated to do nothing more than wreak havoc with solutions to California's water reliability problems"; 3) in response to the Imperial County Board of Supervisors request for copies of the documents she refused saying the matter was **none of their business**.

- c. Representatives from Western Farms met with the IID Board in closed sessions in early 1995, and approached SDCWA with their plans to acquire land and water with the intention of selling water to San Diego.
- d. Don Cox was contacted by, and met with, Ardon Moore (then President of Western Farms), Peter Adamson and Rodney Smith. The latter was a consultant for Western Farms and (coincidentally) is currently on retainer with the IID. He was part of the District's negotiating team during the water transfer talks.

The Imperial Irrigation District Board: Their Comments and Responsibilities:

- 1. The Imperial Irrigation Board Directors in office in 1995 were: Lloyd Allen, Bill Condit, Don Cox, Ted Lyon and Ralph Menvielle. The letters indicated that four of the five directors on the IID Board in 1995 were "reportedly supportive" of the Western Farms plan. Don Cox acknowledged hearing of the plan

and he publicly rejected it, Allen and Condit claim they knew nothing about the plot, Lyon and Menvielle have declined to comment.

2. General Manager Michael Clinton claimed he never heard about the plan (Western Farms proposal to SDCWA) and at the request of SDCWA, wouldn't read the documents when they were made public
3. IID Board President Lloyd Allen said he hadn't heard anything about it. He did, however, thank the IV Press for running the stories based on the materials saying "I can assure you that it was news to me."
4. Board Vice President Bruce Kuhn (who was not on the board at the time these letters were written) said he found it a little disconcerting being sent to negotiate a water transfer deal with San Diego, then finding out that other things were going on at the time of which he was unaware. At an IID Board meeting, he made a motion (which did not pass) to fire Michael Clinton and also said he has lost confidence in the district's legal team and the general manager's office.
5. IID Chief Legal Counsel John Carter was asked if the IID Board of Directors could sell present perfected rights. He rephrased the question to: "Could the district board enter into an agreement with Metropolitan, let's say, and transfer, sell, in perpetuity? The answer is, they have the legal right, power to do that, **but that would probably be a breach of their fiduciary obligation. Somebody would sue and a court would have to make that determination, whether the board had done everything they were required to do as a fiduciary and find that that's in the best interest of the landowner/beneficiaries in the Valley. On the surface, the board has the power, but they can't exercise it arbitrarily and capriciously. They have to fulfill their fiduciary obligations.**" (IV Press 7/6/98)

#### Conclusions:

Has anyone asked U.S. Filter who they are buying Alamo River water from? Since the Alamo River is the result of agriculture runoff, it seems like they should be paying the farmers in Imperial Valley. In addition to paying for water, farmers are fined between three to seven (or more) times the cost of the water for excessive waste water as a part of the IID's conservation plan.

Enclosed for your referral is a copy of a pamphlet from the Imperial Irrigation District entitled "FACT SHEET: Imperial Valley Agriculture 1992". This pamphlet provides some information about farming in the Imperial Valley, states that the Imperial Valley is **one of the most productive agricultural regions in the world**; and that roughly **one out of every three jobs is directly related to agriculture**.

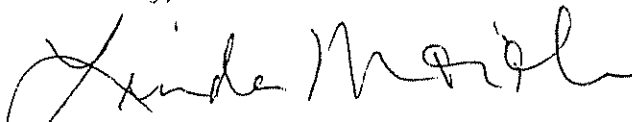
According to David Kennedy, director of the State Department of Water Resources, the transfer is expected to be **principally** through conservation although fallowing remains an option that should be used to a lesser extent. Regarding the issue of how to protect an area's economy from which water is to be transferred such as the Imperial Valley, Kennedy said "The **debate is ongoing** " One only needs to look at Owens Valley to know what will happen to the area's economy.

Richard Satkowski  
Page 5

Did the Imperial Irrigation District Board use due diligence while negotiating the transfer of water and did they fulfill their fiduciary obligations? It is possible that the Board members were unaware of the deception surrounding the transfer. If this is the case, they might not be guilty of fraud, but of gross negligence topped with stupidity and just a touch of arrogance.

I sincerely hope the State Water Resources Control Board will give the public's input more merit than the IID Board did during their "open to the public" sessions. Thank you for your time and consideration.

Sincerely,



Linda Moiola

cc: Imperial Irrigation District  
c/o David L. Osias  
501 W. Broadway, Suite 900  
San Diego, CA 92101

San Diego County Water Authority  
c/o Scott Slater  
21 East Carrillo St.  
Santa Barbara, CA 93101

Congressman Duncan Hunter  
Washington Office  
2265 Rayburn Building  
Washington, D.C. 20515

Assemblyman Jim Battin  
State Capitol Room 2175  
Sacramento, CA 95814

# FACT SHEET: Imperial Valley Agriculture 1992

The Imperial Valley's fertile soil and mild climate allow farmers to enjoy year-round planning, cultivation and harvest. In 1992, approximately 2450,000 acres of Imperial Valley land was farmed to produce nearly \$1 billion in field, vegetable and permanent crops.

## Background

The feasibility of irrigating the barren Imperial Valley with water from the Colorado River was recognized as early as the 1850s. It wasn't until 1901 that the California Development Company commenced diverting water to the Imperial Valley through a canal, called the Alamo, which had its heading in the United States but ran most of its course through Mexico.

In 1905, a winter flood caused the Colorado River to jump its banks and flow freely into the Imperial Valley creating the Salton Sea. The Sea is still used as a drainage basin for irrigation and storm run-off in the Imperial, Coachella and Mexicali Valleys.

The Imperial Irrigation District was formed in 1911 to acquire properties of the bankrupt California Development Company. By 1922, the District had also acquired the 13 mutual water companies which had developed and operated the distribution canals.

Since 1942, the Imperial Valley has received its water through the All-American Canal, which runs its entire length in the United States. The 82-mile-long All-American Canal carries water from the Imperial Dam on the Colorado River west to agriculture and cities in the Imperial Valley.

## Colorado River

The Colorado River is the life-line of the Imperial Valley. Its course runs a 1,400-mile distance and its watershed covers 157 million acres of land. The river produces approximately 14 million acre-feet of water per year. One acre-foot is equal to 325,900 gallons — enough to sustain the water needs of a family of five for one year.

The river makes it possible to irrigate nearly 500,000 acres in the Imperial Valley, in addition to farmland in the Palo Verde and Coachella valleys in California and the Yuma Project in Arizona. Water from the river is also diverted to the Metropolitan Water District for use in Southern California urban areas and to other agriculture and urban interests along its course.

A naturally salty river, the Colorado carries salinity from saline springs and agriculture return flows along its way. Salinity is responsible for millions of dollars in damages to agriculture, municipal and industrial users in the lower basin states.

The Colorado is also an extremely silty river. Six desilting basins remove silt from the water at the Imperial Dam before it is diverted into the All-American Canal.

## Soils

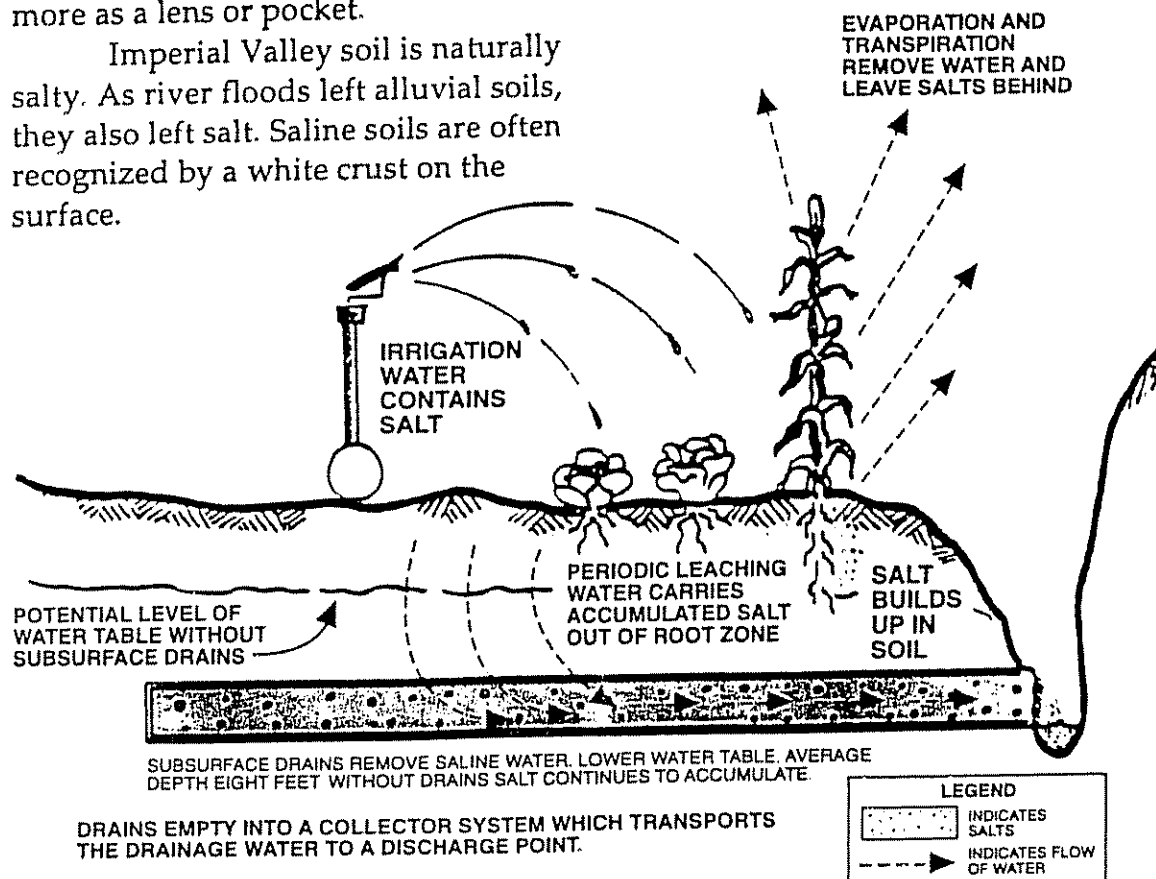
In the Imperial Valley, irrigated farmlands flourish on layers of soil deposited over centuries by the Colorado River. The soils are formed in two principle landscapes. One landscape is the lower Colorado River flood plain and the dry lake basin of old Lake Cahuilla. The other landscape is the nearly level to gently sloping plain of the Imperial East and West Mesas which lie above the beachline of the old lake.

There is no "top soil" in the usual sense. The valley is a large bowl filled with a conglomerate of elements transported by Colorado River flood waters. The soils are up to a full mile or more deep. Beneath the soil surface is a maze of passages of aquifers and aquicludes of clay barriers and sand lenses. In general, there is no gravel and sand water-bearing stratum. Stratum of any one type of soil does not extend over a large area, but occurs more as a lens or pocket.

Imperial Valley soil is naturally salty. As river floods left alluvial soils, they also left salt. Saline soils are often recognized by a white crust on the surface.

## Water

The Colorado River is highly saline and carries about one ton of salt per acre-foot of water applied to fields, posing problems for growers. Imperial Valley farmers battle salinity by leaching salts through the root zone into subsurface tile drainage systems. This saline water is then carried through the District's drainage canals into the Salton Sea. Adequate drainage in the Imperial Valley makes the difference between barren land and highly productive soil. To date, there are 32,227 miles of tile drains and 1,457 miles of drainage ditches in the Imperial Valley.





# Crop Report

# Harvest Schedule

The availability of Colorado River water and a favorable climate make the Imperial Valley one of the most productive agricultural regions in the world. The Imperial Valley has an agriculturally based economy producing nearly \$1 billion in crops annually. Roughly one out of every three jobs is directly related to agriculture.

There are 1,061,637 total acres within District boundaries. In 1992, 407,053 acres were used for field crops, 95,638 for vegetable crops and 20,027 for permanent crops.

## Top 10 Crops for 1992

Cattle .....	\$231,833,000
Alfalfa .....	91,896,000
Carrots .....	71,678,000
Lettuce .....	62,619,000
Sugar Beets .....	45,558,000
Wheat .....	32,610,000
Cantaloupes .....	31,541,000
Sudan Grass .....	24,018,000
Onions .....	23,843,000
Asparagus .....	20,072,000

### Jan — March

Asparagus  
Broccoli  
Carrots  
Lettuce  
Cabbage  
Dehydrator Onions  
Bunching Onions  
Romain  
Summer Squash  
Alfalfa  
Citrus

### July — Sept

Seed Onions  
Tomatoes  
Watermelon  
Casaba  
Okra  
Banana Squash  
Alfalfa  
Wheat  
Flax  
Sesbania  
Forage Sorghums  
Grain Sorghums  
Sugar Beets

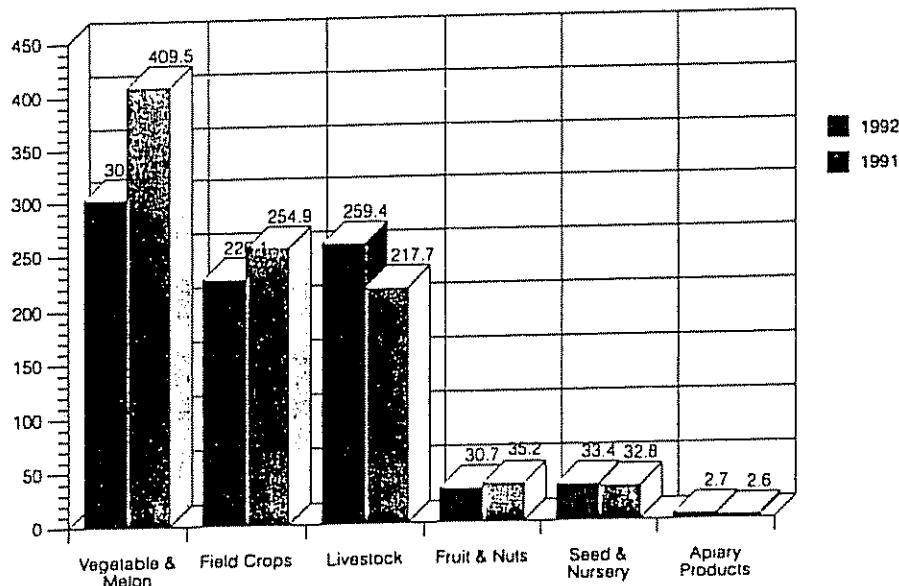
### Apr — June

Asparagus  
Cantaloupe  
Garlic  
Fresh Market Onions  
Seed Onions  
Tomatoes  
Watermelon  
Honeydew  
Okra  
Sweet Corn  
Summer Squash  
Banana Squash  
Alfalfa  
Wheat  
Flax  
Sudan Grass  
Sugar Beets

### Oct — Dec

Broccoli  
Cantaloupe  
Carrots  
Lettuce  
Cabbage  
Cucumbers  
Casaba  
Honeydew  
Persian  
Rapini  
Okra  
Bunching Onions  
Romaine  
Summer Squash  
Alfalfa  
Cotton Sesbania  
Forage Sorghums  
Grain Sorghums

Gross Value Comparison 1991 - 1992  
(Value = Millions of dollars)



# Weather

Imperial Valley enjoys a year-round climate characterized by a temperate fall, winter and spring and a harsh summer. Humidity often combines with the Imperial Valley's normal high temperatures to produce a moist, tropical atmosphere that frequently seems hotter than the thermometer suggests. The highest temperature on record, 119 degrees, has been recorded four times since 1914. The lowest temperature ever recorded was 16 degrees.

The sun shines, on the average, more in the Imperial Valley than anywhere else in the United States. Even in December and January, the sun shines an average of more than eight hours a day.

The 79-year-average rainfall for the Imperial Valley is 2.92 inches. June is the driest month of the year. Since

1914, only twice was there measurable rainfall during that month — 0.04 of an inch on June 2, 1948, and 0.01 of an inch on June 18, 1988. The period from November through March is considered the "rainy" season. On the average there are 16 hours of rainfall during that period, a little more than three hours a month.

Cool winter nights occasionally produce overnight and morning frosts. The only recorded snowfall of consequence occurred in 1932. Up to four inches of snow was reported in the southeast portion of the Imperial Valley on December 13 of that year.

Allowing for year-round crops, the moderate desert climate is a factor in making the Imperial Valley's farmland among the most productive in the world.

## Average Temperatures for 1992

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
High	69.6	75.2	76.7	89.3	94.6	100.2	104.4	104.8	102.7	91.3	75.1	63.2
Low	35.0	49.7	51.2	59.2	65.0	69.0	74.7	79.1	73.2	61.8	45.5	39.5
Mean	55.8	62.4	63.9	74.3	79.8	84.6	89.5	92.0	88.0	76.6	60.3	51.4

## Average Temperatures For Period Between 1914 and 1992

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Max	79.8	84.3	90.6	98.2	104.8	112.4	113.8	112.4	110.0	101.5	89.0	79.1
Min	30.1	34.4	39.2	45.3	51.8	58.3	67.5	66.9	59.3	48.3	37.0	31.3
Mean	54.7	59.1	63.8	70.5	77.4	85.4	91.5	90.6	85.3	74.6	62.7	54.8

11-24

A. 12/7

12-7-98

State Water Resources Control Board  
Division of Water Rights

To Richard Satkowski

Subject: IID Permit 7643 (Application  
7482)

Based on the information available  
to me at this time, I object to  
the hearing process on the "petition  
to transfer water" proceeding  
until the matter of state jurisdiction  
over such a transfer is cleared up.  
Following is a general editorial comment  
which I faxed to SWRCB (9/6) 657-1485  
on or about 10-13-98.

Thanks for calling me back, and pursuant  
to your suggestion, I have left

pg. 2

word for SWRCB attorney, Dan Frink,  
to call me.

The underlying question is - Can  
SWRCB provide information to me  
concerning jurisdiction, and more  
particularly what constitutes an  
intrasate transfer, prior to the  
close of the 12-15-98 comment  
period.

The specific questions & requests for  
information include:

- (1) what were the "policies & procedures"  
concerning intrasate transfers  
on May 1, 1992
- (2) what are SWRCB's current  
policies & procedures concerning  
intrasate transfers

Cliff Hartley

FROM :

PHONE NO. : 619 352 6496

P03

October 13, 1998

To: Imperial Irrigation District Board of Directors  
Citizens Advisory Commission  
State Water Resources Control Board  
Others

Subject: Comments on jurisdiction of Colorado River water transfers

Several years ago, I talked to Ed Anton, chief, division of water rights, State Water Resources Control Board. One of the questions which I asked was - Did you handle the Palo Verde Irrigation District - Metropolitan Water District water transfer, called the test following program?

He said - We neither reviewed nor approved that transfer. For we only deal with intrastate transfers.


Therefore, when David Kennedy, director of the California Department of Water Resources presented the water budget, which was the forerunner of the California 4.4 plan, and the interstate designation for the IID San Diego County Water Authority water transfer had been crossed-out and intrastate designation was inserted, I objected at the IID board workshop. For it was contrary to the facts which had been explained to me by the one managing water transfers for the state.

And I have still not received a clear and concise response to this issue. Even though David Kennedy did call me and we discussed this matter.

My more substantive concern is this, won't IID be under the worst of two worlds with state jurisdiction, i.e.

- (1) The "highest and best use" approach under the state jurisdiction, which means that urban use in the state will have priority over our agricultural use
- (2) The Secretary of the Interior, with the Jensen Report in his hand, declaring, as he did in Las Vegas, I'm the water master of the Colorado River (and don't you forget it)!

?

  
Cliff Hurley

---

Cliff Hurley

1108 W. Hwy. 80, El Centro, CA 92243

Ph &amp; Fax (760) 352-6496

11-25

December 7, 1998

State Water Resources Control Board  
Division of Water Rights  
%Richard Satkowski

Subject: Imperial Irrigation District Permit 7643 (Application 7482)

Based on the information available to me at this time, I object to the "hearing process on the petition to transfer water" proceeding until the matter of state jurisdiction over such a transfer is cleared up.

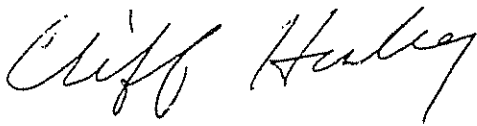
Following is a general editorial comment which I faxed to SWRCB (916) 657-1485 on or about 10-13-98.

Thanks for calling me back. And pursuant to your suggestion, I have left word for SWRCB attorney, Dan Frink, to call me.

The underlying question is - Can SWRCB provide information to me concerning jurisdiction, and more particularly what constitutes an intrastate transfer, prior to the close of the 12-15-98 comment period?

The specific questions and requests for information include:

- (1) What were SWRCB's "policies and procedures" concerning intrastate transfers on May 1, 1992?
- (2) What are SWRCB's current policies and procedures concerning intrastate transfers?



Cliff Hurley



11-26

## CERTIFICATE OF PUBLICATION

In Matter of the Publication of:

### NOTICE OF FILING OF PETITION

STATE OF CALIFORNIA )  
 )((SS  
COUNTY OF VENTURA )

I, SHERRY CASIAS hereby certify that the VENTURA COUNTY STAR is a newspaper of general circulation within the provisions of the Government Code of the State of California, printed and published in the City of San Buenaventura, County of Ventura, State of California; that I am the Principal clerk of the printer of said newspaper; that the annexed clipping is a true printed copy and publishing in said newspaper on the following dates to wit:

OCTOBER 21, 27, NOVEMBER 3, 1998

I certify under penalty of perjury that the foregoing is true and correct.

Dated this 4 day of NOVEMBER 1998, at City of San Buenaventura, California



(Signature)

### NOTICE OF FILING OF PETITION FOR SWRCB APPROVAL OF LONG-TERM WATER TRANSFER

The Imperial Irrigation District ("IID") and the San Diego County Water Authority ("Authority") have jointly petitioned the State Water Resources Control Board of the State of California ("SWRCB") pursuant to Water Code §§ 1735, 1736 and 1737 for approval of a long-term conserved water transfer. These sections authorize the SWRCB to approve a long-term transfer if the proposed transfer, and any changes would (1) not result in substantial injury to any legal user of water, and (2) not unreasonably affect fish, wildlife or other instream beneficial uses. Other Water Code sections and SWRCB proceedings relevant to SWRCB approval include Article X, Section 2 of the California Constitution; Water Code §§ 100, 109, 275, 1011, 1012 and 1013; and SWRCB Decision 1600 and Order 88-20.

The IID/Authority Agreement calls for the IID to conserve up to 200,000 acre-feet of Colorado River water with funds provided by the Authority and then to transfer the amount of water conserved to the Authority for use within its service area. The transfer of conserved water will have a term of 45 years with one optional 30-year renewal. The transfer of conserved water under the Agreement will involve a change in point of diversion under Permit No. 7643 (Application No. 7482) from Imperial Dam to Lake Havasu on the Colorado River, a change in place of use from the IID to the Authority service area, and a change in purpose of use by including municipal use. An environmental assessment will be prepared in compliance with CEQA and NEPA, and a joint EIR/EIS will be prepared.

The SWRCB Notice of the petition filing is posted on the SWRCB website at [www.waterrights.ca.gov](http://www.waterrights.ca.gov). A copy of the Notice may also be obtained by writing to the SWRCB at the address listed below. The Petition and the Agreement for Transfer of Conserved Water (with exhibits) will be posted on the IID website at [www.iid.com](http://www.iid.com) in early November.

Pursuant to the requirements of the Water Code, the SWRCB is seeking information to assist in the evaluation of the proposed transfer. The deadline for submission of comments, recommendations or protests to the SWRCB concerning the proposed long-term conserved water transfer must be submitted in writing by 4:00 p.m. on December 15, 1998, with paper copies to the SWRCB and to the IID and the Authority at the addresses listed below. Supplemental materials may be filed regarding unreasonable impacts on fish, wildlife or other instream beneficial uses up to 90 days after the draft EIR/EIS is issued (estimated for completion in late 2000).

For further information, please contact the SWRCB or the parties at the addresses below.

SWRCB  
c/o Richard Satkowski  
PO Box 2000  
Sacramento, CA 95812-2000

Imperial Irrigation District  
c/o David L. Ostas  
501 W. Broadway, Suite 900  
San Diego, CA 92101

San Diego County Water Authority  
c/o Scott Slater  
21 East Carrillo Street  
Santa Barbara, CA 93101

11-27

PROOF OF PUBLICATION

(2010, 2015.5 CCP)

PROOF OF PUBLICATION OF

ICE

SWRCB

I am a citizen of the United States. I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper of general circulation, printed and published daily in the city of Riverside, County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 25, 1952, Case Number 54446, under date of March 29, 1957, Case Number 65673 and under date of August 25, 1995, Case Number 267364; that the notice, of which the annexed is a printed copy, has been published in said newspaper in accordance with the instructions of the person(s) requesting publication, and not in any supplement thereof on the following dates, to wit:

10/21, 27, 11/3/1998

I Certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated November 3, 1998  
at Riverside, California

DIAMOND ADVERTISING

**NOTICE OF FILING OF PETITION FOR  
SWRCB APPROVAL OF LONG-TERM  
WATER TRANSFER**

The Imperial Irrigation District ("IID") and the San Diego County Water Authority ("Authority") have jointly petitioned the State Water Resources Control Board of the State of California ("SWRCB") pursuant to Water Code §§ 1735, 1736, and 1737 for approval of a long-term conserved water transfer. These sections authorize the SWRCB to approve a long-term transfer if the proposed transfer and any changes would (1) not result in substantial injury to any legal user of water, and (2) not unreasonably affect fish, wildlife or other instream beneficial uses. Other Water Code sections and SWRCB proceedings relevant to SWRCB approval include Article X, Section 2 of the California Constitution; Water Code §§ 100, 109, 275, 1011, 1012 and 1013; and SWRCB Decision 1600 and Order 88-20.

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For further information, please contact the SWRCB or the parties at the addresses below:

SWRCB  
c/o Richard Satkowski  
PO Box 2000  
Sacramento, CA 95812-2000

Imperial Irrigation District  
c/o David L. Osias  
501 W. Broadway, Suite 900  
San Diego, CA 92101

San Diego County Water Authority  
c/o Scott Slater  
21 East Carrillo Street  
Santa Barbara, CA 93101

11-28

DIAMOND D ADVERTISING

ATTN: KATHY GARDENER

PO BOX 6235

BEND, OR 97708

## PROOF OF PUBLICATION

### COUNTY OF FRESNO STATE OF CALIFORNIA

#### EXHIBIT A.

PUBLIC NOTICE

#39656

#### NOTICE OF FILING OF PETITION FOR SWRCB APPROVAL OF LONG-TERM WATER TRANSFER

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San Diego County Water Authority  
c/o Scott Slater  
21 East Carrillo Street  
Santa Barbara, CA 93101

The undersigned states:

McClatchy Newspapers in and on all dates herein stated was a corporation, and the owner and publisher of The Fresno Bee.

The Fresno Bee is a daily newspaper of general circulation now published, and on all-the-dates herein stated was published in the City of Fresno, County of Fresno, and has been adjudged a newspaper of general circulation by the Superior Court of the County of Fresno, State of California, under the date of November 22, 1994, Action No. 520058-9.

The undersigned is and on all dates herein mentioned was a citizen of the United States, over the age of twenty-one years, and is the principal clerk of the printer and publisher of said newspaper; and that the notice, a copy of which is hereto annexed, marked Exhibit A, hereby made a part hereof, was published in The Fresno Bee in each issue thereof (in type not smaller than nonpareil), on the following dates

Oct 21, 27, Nov 3, 1998

Beginning on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_,  
to the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ inclusive.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Dated NOVEMBER 3, 1998

Cathy Aguilera

11-29

DIAMOND ADVERTISING

P.O. BOX 6235

BEND, OR. 97708

State of California, } ss.  
County of Los Angeles

TROY CHERRY of said

County and State, being duly sworn, says:

That he is and at all times herein mentioned was a citizen of the United States, over 21 years of age, and not a party to nor interested in the above entitled matter; that he is a principal clerk of the printers and publishers of the LOS ANGELES TIMES a newspaper printed and published daily in the said Los Angeles County; that the

LEGAL NOTICE

in the above entitled matter of which the annexed is a printed copy, was published in said newspaper

LOS ANGELES TIMES

TIMES MIRROR SQUARE  
LOS ANGELES CA, 90053

on the following days, to-wit:

WEDNESDAY OCTOBER 21, 1998

TUESDAY OCTOBER 27, 1998

TUESDAY NOVEMBER 3, 1998

Troy Cherry

Subscribed and sworn to before

me, this 30 day of

November 1998

Alicia D. Burrue

Notary Public in and for the County of Los Angeles, State of California



# Affidavit of Publication

-of-

CLASSIFIED ADVERTISING

## NOTICE OF FILING OF PETITION FOR SWRCB APPROVAL OF LONG-TERM WATER TRANSFER

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San Diego, CA 92101

San Diego County Water Authority  
c/o Scott Slater  
21 East Carrillo Street  
Santa Barbara, CA 93101



11-30

San Diego County Water Authority  
c/o Scott Slater  
21 East Carrillo Street  
Santa Barbara, CA 93101

11-31

# Affidavit of Publication

DIAMOND ADVERTISING

P.O. BOX 6235

BEND, OR 97708

STATE OF CALIFORNIA} ss  
County of San Diego}

The Undersigned, being duly sworn, deposes and says: That...She is a resident of the County of San Diego. THAT...She is and at all times herein mentioned was a citizen of the United States, over the age of twenty-one years, and that .....She is not a party to, nor interested in the above entitled matter; that .....She is ..... Chief Clerk for the publisher of .....

**The San Diego Union-Tribune**  
a newspaper of general circulation, printed and published daily in the City of San Diego, County of San Diego, and which newspaper is published for the dissemination of local news and intelligence of a general character, and which newspaper at all the times herein mentioned had and still has a bona fide subscription list of paying subscribers, and which newspaper has been established, printed and published at regular intervals in the said City of San Diego, County of San Diego, for a period exceeding one year next preceding the date of publication of the notice hereinafter referred to, and which newspaper is not devoted to nor published for the interests, entertainment or instruction of a particular class, profession, trade, calling, race, or denomination, or any number of same; that the notice of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following date, to-wit:

OCTOBER 20, 1998

OCTOBER 27, 1998

NOVEMBER 3, 1998

*[Signature]*  
Chief Clerk for the Publisher  
Subscribed and Sworn to before me this

Nov 4, 1998

*[Signature]*  
Notary Public in and for the said County and State

## Affidavit of Publication of

Legal Classified Advertisement

807.1

Ordered by: KATHY GARDENER

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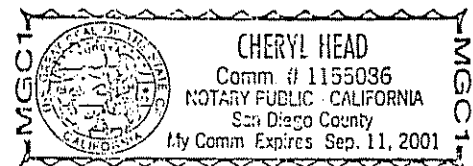
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Santa Barbara, CA 93101



11-32

DIAMOND ADVERTISING  
P.O. BOX 6235  
BEND, OR. 97708  
ATTN: KATHY GARDNER

DECLARATION OF PUBLICATION  
(C.C.P. 2015.5)

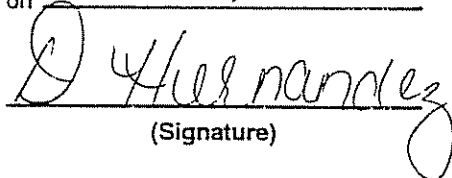
COUNTY OF SACRAMENTO

STATE OF CALIFORNIA

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the printer and principal clerk of the publisher of The Sacramento Bee, printed and published in the City of Sacramento, County of Sacramento, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Sacramento, State of California, under the date of September 26, 1994, Action No. 379071; that the notice of which the annexed is a printed copy, has been published in each issue thereof and not in any supplement thereof on the following dates, to wit:

October 20, 27, November 3, '1998

I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Sacramento, California, on November 3, 1998

  
(Signature)

**NOTICE OF FILING OF PETITION FOR SWRCB  
APPROVAL OF LONG-TERM WATER TRANSFER**

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Santa Barbara, CA 93101

11-33

THE SUN  
399 North "D" Street  
San Bernardino, CA 92401  
(909) 397-3986

KATHY GARDNER  
DIAMOND ADVERTISING  
P.O. BOX 6235  
BEND OR 97708

CNS1650960

Proof of Publication

(2015.5 C.C.P.)

FILING OF PETITION FOR SWRCB

I am a citizen of the United States, over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the representative of the printer and publisher of The Sun, a daily newspaper printed and published in the English language in the City of San Bernardino, County of San Bernardino, and adjudged a newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of San Bernardino, State of California, under date of June 20, 1952, Case No. 73084. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

10/20/98, 10/27/98, 11/03/98

EXECUTED ON : 11/03/98  
AT RIVERSIDE, CALIFORNIA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

  
.....  
Signature

NOTICE OF FILING OF PETITION FOR SWRCB  
APPROVAL OF LONG-TERM WATER TRANSFER

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21 East Carrillo Street  
Santa Barbara, CA 93101

# 4732



11-34

# DECLARATION OF PUBLICATION OF

---

Jocelyn C. Lazo

declares that:

The annexed advertisement has been regularly published in the

SAN FRANCISCO CHRONICLE  
and  
SAN FRANCISCO EXAMINER

which are and were at all times herein mentioned established as newspapers of general circulation in the City and County of San Francisco, State of California, as that term is defined by Section 6000 of the Government Code.

San Francisco Chronicle

(Name of Newspaper)

---

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From OCT 20TH 19 98  
To NOV. 4TH 19 98  
Both days inclusive, namely, on

10-20, 10/27, & 11/4, 1998  
(Dates of Publication)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on NOV. 5TH 19 98  
at San Francisco, California.

Jocelyn Lazo Burrus

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APPROVAL OF LONG-TERM WATER TRANSFER**

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Sacramento, CA 95812-2000

Imperial Irrigation District  
c/o David L. Osias  
501 W. Broadway, Suite 900  
San Diego, CA 92101

San Diego County Water Authority  
c/o Scott Slater  
21 East Carrillo Street  
Santa Barbara, CA 93101

11-35

**NOTICE OF FILING OF PETITION FOR  
SWRCB APPROVAL OF LONG-TERM WATER TRANSFER**

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c/o Richard Satkowski	c/o David L. Osias	Authority
PO Box 2000	501 W. Broadway, Suite 900	c/o Scott Slater
Sacramento, CA 95812-2000	San Diego, CA 92101	21 East Carrillo Street
		Santa Barbara, CA 93101

11-36

PROOF OF PUBLICATION  
San Jose Mercury News  
750 RIDDER PARK DRIVE  
SAN JOSE, CALIFORNIA 95190

IN THE  
City of San Jose  
STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

Diamond Advertising  
P.O. Box 6235  
Bend, OR 97708  
Attn: Kathy Gardner  
Legal ad No. 9443-L

STATE OF CALIFORNIA, )  
) SS.  
COUNTY OF SANTA CLARA)

The undersigned, being first duly sworn, deposes and says: That at all times hereinafter mentioned affiant was and still is a citizen of the United States, over the age of eighteen years, and not a party to nor interested in the above entitled proceedings; and was at and during all said times and still is the principal clerk of the printer and publisher of the San Jose Mercury News, a newspaper of general circulation printed and published daily in the city of San Jose in said County of Santa Clara, State of California, that said San Jose Mercury News is and was at all times herein mentioned a newspaper of general circulation as that term is defined by Sections 6000 and following, of the Government Code of the State of California, and, as provided by said sections, is published for the dissemination of local or telegraphic news and intelligence of a general character, having a bona fide subscription list of paying subscribers, and is not devoted to the interests or published for the entertainment or instruction of a particular class, professional, trade, calling, race or denomination, or for the entertainment and instruction of any number of such classes, professionals, trades, callings, races or denominations; that at all times said newspaper has been established, printed and published in the said city of San Jose in said County and State at regular intervals for more than one year proceeding the first publication of the notice herein mentioned; that said notice was set in type not smaller than nonpareil and was preceded with words printed in black-face type not smaller than non pareil, describing and expressing in general terms, the purport and character of the notice intended to be given; that the clipping of which is annexed is a true printed copy, was published and printed in said newspaper on the following dates, to-wit:

October 20,27,November 3,1998

Dated at San Jose, California

this 4<sup>th</sup> day of November, 1998

I declare under penalty of perjury that the foregoing is true and correct.

Signed Kathy Gardner  
Principal clerk of the printer and publisher of the San Jose Mercury News.

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		Santa Barbara, CA 93101



11-37

# The Oakland Tribune

Making a difference from the Bay to the Valley



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LEGAL NO. 1365505

Client #SWRCB #807.1

## PROOF OF PUBLICATION

Case No. \_\_\_\_\_

In the matter of

The Imperial Irrigation District &

the San Diego County Waste Authority

PUBLIC NOTICE

PUBLIC NOTICE

### NOTICE OF FILING OF PETITION FOR SWRCB APPROVAL OF LONG-TERM WATER TRANSFER

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c/o Richard Satkowski	c/o David L. Osias	Authority
PO Box 2000	501 W. Broadway, Suite 900	c/o Scott Slater
Sacramento, CA 95812-2000	San Diego, CA 92101	21 East Carrillo Street
		Santa Barbara, CA 93101

The Oakland Tribune, Legal No. 1365505  
October 20, 27; Nov. 3, 1998

Samantha Allen-Wise

deposes and

says that he/she was the Public Notice Advertising Clerk of THE OAKLAND TRIBUNE a newspaper of general circulation as defined by Government Code Section 6000 adjudicated as such by the Superior Court of the State of California, County of Alameda (Order No. 237798, December 4, 1951) which is published and circulated in Oakland Township in said county and state seven days a week

That the

Notice of Filing of Petition

of which the annexed is a printed copy, was published in every issue of THE OAKLAND TRIBUNE on the following dates

October 20; Nov. 3, 1998

October 27;

I certify (or declare) under the penalty of perjury that the foregoing is true and correct

Date November 3, 1998

at Oakland, California

Public Notice Advertising Clerk

11-38

PROOF OF PUBLICATION

(2015.5 C.C.P.)

STATE OF CALIFORNIA

County of Imperial

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk\* of the printer of the

IMPERIAL VALLEY PRESS

a newspaper of general circulation, printed and published daily in the City of El Centro, County of Imperial and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Imperial, State of California, under the date of October 9, 1951, Case Number 26775; that the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

October 20, 27

November 3

all in the year 1998

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

*Sandra L. Fonseca*

SIGNATURE

\* Printer, Foreman of the Printer, or Principal Clerk of the Printer.

Date November 3, 1998  
at El Centro, California.

This space is for County Clerk's Filing Stamp

Proof of Publication of

**NOTICE OF FILING OF PETITION FOR SWRCB  
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Santa Barbara, CA 93101  
EO91/#658

O20,27,N3

11-39

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O20,27,N3

1140

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Santa Barbara, CA 93101

11-41



Winston H. Hickox  
Secretary for  
Environmental  
Protection

# State Water Resources Control Board

## Executive Office

1001 I Street, 25<sup>th</sup> Floor, Sacramento, California 95814  
P O. Box 100, Sacramento, California 95812-0100  
(916) 341-5615 ♦ FAX (916) 341-5621 ♦ [www.swrcb.ca.gov](http://www.swrcb.ca.gov)



Gray Davis  
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption  
For a list of simple ways you can reduce demand and cut your energy costs. see our website at [www.swrcb.ca.gov](http://www.swrcb.ca.gov)*

July 5, 2002

To: Enclosed List of Parties To  
Exchange Information

## PETITION OF IMPERIAL IRRIGATION DISTRICT AND SAN DIEGO COUNTY WATER AUTHORITY FOR APPROVAL OF LONG-TERM TRANSFER OF CONSERVED WATER

Recently, I received letters concerning this proceeding from the following interested persons: Ed Snively Realty; David M. Leone, Imperial Valley Press; John D. Anderson, Imperial County Superintendent of Schools; Billy R. Carver, Hutchinson and Bloodgood LLP; Jerrie Pittman, B&P Enterprises; Jennifer Lee Donatt, Manpower; Wes Blakely, Bonanza Farms, Inc.; Marla Byrum, Wymore, Inc.; Prabhdeep Singh, M. D.; and John Grizzle. In accordance with section 11430.50 of the Administrative Procedure Act, I am writing to inform the parties that these letters will be made a part of the record in this proceeding. In view of the number and relative brevity of the letters, and the fact that the authors of the letters are not parties to this proceeding, we will post the letters on our website (<http://www.swrcb.ca.gov>), rather than require copies of the letters to be served on the parties to this proceeding.

If you have any questions or would like a copy of any of the letters referenced above, please contact Andy Fecko, Hearing Coordinator, in the Division of Water Rights at (916) 341-5393, or Dana Differding, Staff Counsel, in the Office of Chief Counsel at (916) 341-5188.

Sincerely,

*for Thomas Howard*  
for Arthur G. Baggett, Jr.  
Hearing Officer

Enclosure

cc: See next page

Enclosed List of Parties  
To Exchange Information

- 2 -

July 5, 2002

cc: Mr. Richard Katz, Executive Office [24<sup>th</sup> Floor]  
Mr. Gary Carlton, Executive Office [24<sup>th</sup> Floor]  
Mr. Andy Fecko, Division of Water Rights [14<sup>th</sup> Floor]  
Mr. Tom Peltier, Division of Water Rights [14<sup>th</sup> Floor]  
Ms. Dana Differding, Office of Chief Counsel [22<sup>nd</sup> Floor]  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**LIST OF PARTIES TO EXCHANGE INFORMATION**  
**Imperial Irrigation District/San Diego County Water Authority**  
**Water Transfer Hearing**

(Note: the parties whose E-mail addresses are listed below agreed to accept electronic service, pursuant to the rules specified in the Hearing Notice.)

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Mallory  
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San Diego, CA 92101-3547  
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Hatch and Parent  
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Santa Barbara, CA 93102-0720  
Rep: San Diego County Water Authority

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E-mail Address: [doyle@nwf.org](mailto:doyle@nwf.org)

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STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition filed by

**IMPERIAL IRRIGATION DISTRICT  
AND SAN DIEGO COUNTY WATER  
AUTHORITY,**

Petitioners.

**NOTICE OF ERRATA TO**

COMMENTS OF WESTERN FARMS, L.P.  
ON PETITION FOR APPROVAL OF  
LONG-TERM CONSERVED WATER  
TRANSFER AGREEMENT AND CHANGE  
IN POINT OF DIVERSION, PLACE OF  
USE AND PURPOSE OF USE

**AND NOTICE OF CHANGE OF  
ADDRESS.**

**To the State Water Resources Control Board and Interested Parties:**

Please note that (1) Western Farms, L.P. submitted its comments on the *Petition for Approval of Long-Term Conserved Water Transfer Agreement and Change in Point of Diversion, Place of Use and Purpose of Use* filed by Imperial Irrigation District and San Diego County Water Authority, (2) Western Farms, L.P.'s comments contained several typographical errors, and (3) this Notice of Errata serves to correct those errors, as follows:



1. Comments, p. 2: Replace "Water Users" with "Water Resources" in the last sentence.
2. Comments, p. 3: Imperial Irrigation District is referred to as "IID" or "Imperial" throughout. Delete "Valley" from "CVWD Valley landowners."
3. Comments, p. 5: Replace "IID Service Area" with "Imperial Service Area."
4. Comments, p. 6: Add a comma after "Salton Sea" in the third sentence. Replace "Silverlear" with "Silverleaf."
5. Comments, p. 7: Delete the second "the" in the last sentence before subpart 3.
6. Comments, pp. 9 and 10: Replace "Charley" with "Chaffey" in three places.
7. Comments, p. 23: In the penultimate sentence before Part III, replace "is" with "are."
8. Comments, p. 24: Change the second word "transfer" to "transfers."
9. Comments, p. 25: In the second full sentence, replace "transfer's" with "transferor's."
10. Comments, p. 30: Replace "IID and CVWD Valleys" with "Imperial and Coachella Valleys" in three places.
11. Comments, p. 31: Replace "IID Service Area" with "Imperial Service Area" in three places and "IID and CVWD Valleys" with "Imperial and Coachella Valleys" in two places.
12. Comments, p. 33, fn. 32: Delete "wrote" the second time it appears.
13. Comments, p. 35: Replace in the second sentence "IID Valley" with "Imperial Valley."
14. Comments, p. 36: After "section 8" in the fifth line, add "of the 1902 Reclamation Act."
15. Comments, p. 37: Replace "were" for "was" after "each party's water rights."
16. Comments, p. 38: Replace "IID and CVWD Valley" with "Imperial and Coachella Valleys" and "IID Service Area" with "Imperial Service Area." Delete ", however," the second time it appears in the first

sentence under subpart B. Replace "1932 Compromise Agreement" with "1934 Compromise Agreement."

Notice is also given that page 10 of the Comments was inadvertently omitted from the copies served on the Interested Parties and is attached.

Notice is also given that the name and address of the firm representing Western Farms, L.P. has changed. All future correspondence and filings should be addressed to:

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Dated: October 6, 1999.

Respectfully submitted,

Felger & Associates

A handwritten signature in cursive script, appearing to read "Warren Felger", written over a horizontal line.

Warren P. Felger, Esq.  
Attorneys for Western Farms, L.P.

To fully develop the Imperial Valley, the California Development Company divided the Valley into districts of varying size, each to comprise a mutual water company, which would be organized as development of the proposed canal system progressed. The formation of the mutual water companies would enable the California Development Company to market its Imperial Valley lands to settlers, who would purchase the mutual water company stock. The proceeds from the sales of water company stock would enable the California Development Company to construct the proposed canal system. Over a dozen mutual water companies were to be formed during the development of the Imperial Valley.

Mr. Charley was ultimately successful in financing and constructing a canal and other works to bring Colorado River water into the Valley. Water was first diverted from the Colorado River on May 14, 1901, to the new canal, which began in the United States but which ran most of its length in Mexico before recrossing the international boundary into the Imperial Valley. The first delivery of water to lands within the United States occurred in June, 1901, near Calexico. Development progressed rapidly thereafter. At the beginning of 1901, the only men in the Valley were the surveyors for the canal system. A year later about 2,000 people had settled in the Valley and by 1904 the population had grown to 7,000, increasing to between 12,000 and 14,000 by the next year.

Combined problems of silt, requiring a diversion through Mexico, and unusual winter floods on the Gila River, tributary to the Colorado River, resulted in the entire flow of the Colorado River flowing into Imperial Valley from 1905 to 1907. This flood greatly enlarged the New and Alamo Rivers and refilled the ancient Salton Sea. Through the years 1905 and 1906, five separate and distinct attempts were made to return the river to its old

### PROOF OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of Felger & Associates, 726 West Barstow Avenue, Suite 106, Fresno, CA 93704. I am over 18 years of age and am not a party to the within action. On October 5, 1999, I served a true copy of the following document:

**NOTICE OF ERRATA TO COMMENTS OF WESTERN FARMS, L.P. ON  
PETITION FOR APPROVAL OF LONG-TERM CONSERVED WATER  
TRANSFER AGREEMENT AND CHANGE IN POINT OF DIVERSION,  
PLACE OF USE AND PURPOSE OF USE AND NOTICE OF CHANGE  
OF ADDRESS**

on the party(ies) in this action by placing a true copy thereof in a sealed envelope(s), addressed as follows:

#### **SEE ATTACHED SERVICE LIST**

	(BY FACSIMILE) I sent by facsimile transmission a copy to the person named above, to a facsimile machine maintained by such person at the facsimile machine telephone number as last given by that person on any document which he or she has filed in this matter, which constitutes serve in accordance with section 1013(e) of the Code of Civil Procedure.
X	(BY MAIL) I placed such sealed envelope, with postage fully repaid for first-class mail, for collection and mailing at Felger & Associates, Fresno, California following ordinary business practices. I am readily familiar with the practice of Felger & Associates for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.
	(BY OVERNIGHT DELIVERY) I placed each such sealed envelope, with delivery fees provided for, for collection and overnight delivery at Felger & Associates, Fresno, California following ordinary business practices. I am readily familiar with overnight delivery, said practice being that in the ordinary course of business, correspondence is deposited in the facility regularly maintained by the express services carrier the same day as it is placed for collection.
	(BY PERSONAL SERVICE) I personally delivered each sealed envelope, by leaving with the office receptionist or with a person having charge thereof, clearly labeled to identify the attorney being served.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Dated: October 6, 1999

  
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STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Petition filed by

**IMPERIAL IRRIGATION DISTRICT  
AND SAN DIEGO COUNTY WATER  
AUTHORITY,**

Petitioners.

[IID Irrigation District's  
Application No. 7482]

COMMENTS OF WESTERN FARMS, L.P.  
ON PETITION FOR APPROVAL OF  
LONG-TERM CONSERVED WATER  
TRANSFER AGREEMENT AND CHANGE  
IN POINT OF DIVERSION, PLACE OF  
USE AND PURPOSE OF USE

Western Farms, L.P., a California limited partnership,<sup>1</sup> owns over 37,000  
acres of irrigated farmland in Imperial Irrigation District, is the largest landowner within the

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<sup>1</sup> United States Filter Corporation owns, directly or indirectly, all of the general and limited partnership interests of Western Farms, L.P. Earlier this year, Vivendi, a *société anonyme* organized under the laws of France, recently acquired all of the outstanding stock of United States Filter Corporation, which is now a subsidiary of Vivendi.

district, and submits these comments to the State Water Resources Control Board ("State Board") in support of its approval of the above-captioned petition (the "*Petition*").

Western Farms, L.P. reserves the right to comment on various water rights and environmental matters that may be brought before the State Board during the pendency of the *Petition*, including, but not limited to, the following:

Environmental review and analysis under CEQA and NEPA, and the anticipated joint EIR/EIS that will be prepared and adopted by the appropriate parties, which we understand will address whether the changes in the place and purpose of use of IID's water will unreasonably affect fish, wildlife, or other instream beneficial uses.

Prospective contractual arrangements between IID, MWD, CVWD and the Bureau of Reclamation ("*Reclamation*") pertaining to the *Petition*, the quantification of water rights under the Seven-Party Agreement and Reclamation's contracts, and satisfaction of miscellaneous present perfected rights, reserved federal rights and Indian Tribal rights to the waters of the Colorado River.

Protests and comments filed by MWD, CVWD, Reclamation and other parties interested in the *Petition*, evidence and other information submitted by interested parties in connection with the *Petition*, and State Board or staff reports, decisions or orders made with respect to the *Petition*.

Regulations or other administrative pronouncements by Reclamation regarding the marketing, transferring or conservation of Colorado River water, the banking of Colorado River water in Lake Mead, or the reoperation of the principle reservoirs on the Colorado River, including Lakes Powell and Mead.

The development, refinement and formalization of the California 4.4 Plan by the California Colorado River Board, the California Department of Water Users and, if applicable, the various users of Colorado River water in California.

In addition, Western Farms, L.P. would be pleased to provide testimony and additional materials on any matters raised in the Petition or these comments at the request of the State Board.

Until these or other related matters are submitted to the State Board for its consideration, Western Farms, L.P. limits its comments below to whether granting of the Petition would result in any substantial injury to any legal user of water under California Water Code section 1735 *et seq.*

## **I. INTRODUCTION.**

In 1931, representatives of seven cities, counties, and water agencies signed an agreement recommending the amounts of Colorado River water that the federal government should contract to supply to California users under the 1929 Boulder Canyon Project Act, as well as the relative priorities for water deliveries under those contracts. The Imperial Irrigation District ("*IID*"), the Metropolitan Water District of Southern California ("*MWD*"), the Coachella Valley County Water District ("*CVWD*"),<sup>2</sup> and the City and County of San Diego were all signatories to this negotiated recommendation, which has been widely dubbed the "Seven-Party Agreement."

When the Seven-Party Agreement was signed, the parties contemplated that CVWD Valley landowners would become members of IID and receive water through the All-American Canal under IID's federal contract. Rather than recommending separate allocations for both IID and CVWD, the Seven-Party Agreement treated IID and CVWD lands as a group. When CVWD landowners ultimately chose not to join IID due to concerns

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<sup>2</sup> The district subsequently changed its name to the Coachella Valley Water District.

over IID's past and prospective financial condition, CVWD and IID negotiated a "Compromise Agreement" in 1934 specifying how the recommended water allocations in the Seven-Party Agreement should be divided between the two districts.

MWD has suggested that the Seven-Party Agreement bans any transfer of Colorado River water from IID to the San Diego County Water Authority ("SDCWA") unless MWD and the other signatories agree to the transfer. Contrary to MWD's suggestion, the Seven-Party Agreement does not restrict IID's authority to transfer water to SDCWA or to any other potential purchaser. Nor does the Seven-Party Agreement give MWD or other signatories any power to veto or condition an IID transfer. As even the simplest perusal of the Seven-Party Agreement demonstrates, the issue of water transfers never comes up in the Agreement. The Seven-Party Agreement does not even mention the word "transfer". In keeping with its limited purpose, the Seven-Party Agreement recommends the quantity of water that IID should receive under its federal contract and recognizes that IID's deliveries should have priority over water deliveries to MWD.

CVWD also has suggested that the 1934 Compromise Agreement precludes any transfer without CVWD's approval.<sup>3</sup> Like the Seven-Party Agreement, however, the 1934 Compromise Agreement does not even mention transfers. The principal function of the 1934 Compromise Agreement was simply to recognize IID's superior rights to Colorado River water and to authorize CVWD to enter into its own federal water contract subject to

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<sup>3</sup> Because MWD was not a signatory to the 1934 Compromise Agreement, MWD cannot use that agreement to object to an IID transfer. Section 16 expressly provides that, "*Except as between the parties hereto the provisions of this agreement shall not affect nor impair any rights of either party to the water of the Colorado River.*" 1934 Compromise Agreement § 16, in *The Hoover Dam Documents*, app. 1107, at A625 (Ray Lyman Wilbur & Northcut Ely, eds. 1948) (emphasis added).

IID's rights. Although the 1934 Compromise Agreement provides that IID shall have a prior right "exclusively for use in the IID Service Area," this language does not prevent IID from transferring its water. As explained below, appropriative rights always specify a particular place of use, but California law has long recognized an appropriator's right, despite such specification, to change the place of use.

The United States Supreme Court's decree in *Arizona v. California*, has superseded both the Seven-Party Agreement and the 1934 Compromise Agreement in defining IID's water rights. As the Supreme Court elaborated in its unanimous 1980 decision in *Bryant v. Yellen*, IID enjoys "present perfected rights" to 2,600,000 acre feet ("af") of water, superior to IID's federal contract right. As both MWD and CVWD have recognized, the federal government has an "obligation" to satisfy these rights. In fact, MWD's and CVWD's water contracts provide that no water can be delivered to them until IID's and others' present perfect rights have been satisfied.

According to the Supreme Court, IID's present perfected rights originate under state law and "are to be interpreted in the light of state law." IID's contractual and appropriative rights to Colorado River water beyond its 2,600,000 af of present perfected rights similarly rest on state law. California law expressly authorizes IID to transfer its water to areas such as San Diego that are in need of a stable long-term water supply. Indeed, California law actively encourages such transfers as a critical element of the State's water policy for managing Colorado River supplies into the 21<sup>st</sup> century.

## **II. IMPERIAL IRRIGATION DISTRICT AND WATER RIGHTS.**

### **A. INTRODUCTION.**

#### **1. AGRICULTURAL DEVELOPMENT.**

IID is located in Imperial County between the southern end of the Salton Sea and the Mexican border. Imperial Valley lies below sea level, and is an arid desert in its natural state. The New and Alamo Rivers traverse the valley from Mexico to the Salton Sea which is a natural sump. Imperial encompasses over one million acres, of which about 465,000 are irrigated each year (depending on various following requirements of government programs). The main crops grown in the Imperial Valley, based on revenues, are cattle, alfalfa, lettuce, carrots, cantaloupes, sugar beets, onions, tomatoes, sudan grass and cauliflower. Silverleaf whitefly problems have plagued most fresh vegetable crops during the past few years and pink bollworm problems, over a longer period, have sharply reduced the acreage planted to cotton. About one-third of all acreage within Imperial is farmed by the landowners, the rest of the acreage is farmed by tenants.

The soils within Imperial vary from the Imperial clays with a low permeability to highly permeable sandy soils. There is a high degree of unpredictable stratification of the soils within IID. This makes it difficult to apply water evenly and to obtain the necessary penetration for effectively leaching salts from the soil. Land leveling has helped in attaining water penetration of the soils with low permeability. An extensive tile drain was installed in order to keep the soil from becoming water logged and to attain the leaching needed because of salts in the soil and irrigation water.

#### **2. IID'S IRRIGATION SYSTEM.**

The average rainfall in the Imperial Valley is approximately 2.8 inches. Agriculture, therefore, is not possible without importing irrigation water from the Colorado

River. All irrigation, municipal, industrial and domestic water used within the Imperial Valley is supplied by Imperial from the Colorado River. The delivery system begins at the Imperial Dam (downstream of Parker Dam, the diversion point for MWD). To obtain water deliveries, Imperial places an order with the Bureau of Reclamation, which must then release water from Hoover Dam 305 miles upstream before Imperial can divert the released water at the Imperial Dam and into the All-American Canal for further distribution into three major canals within the district. The entire delivery system operates through gravity flow.

Through the All-American Canal gravity-flow, Colorado River water is conveyed to the head of Imperial's system at Drop 1. There and further downstream, several main canals branch off the All-American: East Highline, Central Main and Westside Main canals. Service to Imperial Valley is largely provided from these three main canals or from the tributary lateral canals that they supply. In total, the delivery system which begins at the Imperial Dam includes about 1,760 miles of conveyance and distribution canals.

Imperial also operates and maintains approximately 1,450 miles of drainage canals to collect irrigation return flows. These canals drain into the New and Alamo Rivers which in turn drain into the Salton Sea. During the period of 1965 to 1980, Imperial's diversions from the Colorado River averaged 2,855,000 af per year. Of this amount, an average of 1,036,446 af entered the Salton Sea as irrigation return flow from Imperial. *State Board Decision 1600* (1984), p. 9, discussed below. Imperial's return flow constituted about 71 percent of all inflow to the Salton Sea during the these years.

### **3. HYDROELECTRIC POWER GENERATION.**

Imperial has constructed and operates hydroelectric power plants at Drops 1 through 5 along the All-American Canal, which has a total drop of 175 feet (the United

States reserved the exclusive right to develop power facilities along the initial reach of the All-American Canal between Imperial Dam and Siphon Drop).<sup>4</sup>

The development of hydro-electric power by Imperial was expressly sanctioned by the Project Act. Section 7 of the Project Act allows the districts which receive water from the All-American Canal to develop hydroelectric power plants along the Canal; however, the net proceeds from any power development are required to be paid into the Colorado River Dam Fund and credited to the various districts until the construction, operation and maintenance costs owing to the United States have been paid. See Imperial Irrigation District 1932 Contract, Art. 14.

Today, Imperial serves more than 70,000 electrical customers in Imperial Valley and parts of Riverside and San Diego counties and has the lowest rates in the region. In total, Imperial generates over 40% of the electricity its customers need; the rest is purchased from other power companies. Furthermore, over 75% of Imperial's revenues are from power sales; less than 20% are from water sales.

## **B. WATER DEVELOPMENT.**

### **1. INTRODUCTION.**

As early as 1850, several men who surveyed the Imperial Valley realized that the area could be made agriculturally productive with an assured water supply. W.P. Blake, a geologist attached to a Congressionally authorized expedition charged with locating a railroad route between the Mississippi River and the Pacific Ocean, made the first scientific

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<sup>4</sup> The first hydroelectric plants on the All-American Canal were completed at Drops 3 and 4 in 1941. A hydro power facility at Drop 2 was installed in 1953. The Drop 5 installation was completed in 1982; the Drop 1 and East Highline Turnout hydro plants were commissioned in 1984.



examination of the Imperial Valley. He noted that the then dry lake bed of the Salton Sea and the surrounding area were below sea level and could be irrigated with water from the Colorado River.

Later, Dr. O.M. Wozencraft was the first person to attempt to raise capital to reclaim the Imperial Valley. As a result of his efforts, the California legislature, by an Act approved April 15, 1859, ceded to him "all the right, title, and interest, of the State of California, which the State now has, or which she may hereafter acquire, in and to the land [which was to become the Imperial and Coachella Valleys]." However the grant was conditioned on Dr. Wozencraft developing a firm supply of irrigation water for the valleys. Dr. Wozencraft sought the aid of the federal government to construct a canal from the Colorado River; however, due to Congress' preoccupation with the Civil War, no legislation was enacted.

Others were to later seek, without success, federal aid to develop the Colorado River Desert, until C.R. Rockwood came to the area. On April 25, 1896, Mr. Rockwood and his associates formed the California Development Company, and attempted to finance the construction of canal works. All efforts failed until 1899 until George Charley, the developer of Etiwanda and Ontario near Los Angeles, agreed to take charge of the proposed project and by contract was accorded full control of the California Development Company. In return, Mr. Charley agreed to finance and construct headworks at a point situated in California immediately above the international border and a canal to take water from the Colorado River through Mexico to the Alamo River, which would be used to bring the Colorado River water into the Imperial Valley.

course, all of which failed. However, with the financial aid of the Southern Pacific Company, and a personal appeal by President Theodore Roosevelt to E.A. Harriman, president of the Southern Pacific Company, success finally occurred in 1907.

As a result of the flood expenses, the California Development Company was in financial ruins and was placed in receivership. The Southern Pacific Company, as its largest creditor, took over operations, and sought, unsuccessfully, the assistance of the United States in undertaking a flood control project. With the operation of the canal system under the control of the Southern Pacific Company, the settlers of the Valley began to realize that the financial and operational aspects of the canal system could best be managed by a public agency rather than a private company. Accordingly, the Imperial Irrigation District was organized in 1911 to acquire the properties of the bankrupt California Development Company.

The sale of the assets of the California Development Company to Southern Pacific Company occurred in 1916, which as previously arranged, transferred the assets to Imperial Irrigation District that same year. By this transfer, the District acquired ownership of the canal system, water rights, and properties of the defunct California Development Company and two related Mexican companies. As organized, the District included 513,368 acres within its boundaries.

## **2. HISTORICAL WATER RIGHTS.**

The genesis of Imperial Irrigation District's water rights to the Colorado River lies with the California Development Company. Commencing in 1895 and continuing through 1899, a series of water appropriations were made by individuals and also by the California Development Company under the existing laws of the State of California, by posting notices at the intended point of diversion on the Colorado River and recording them

with the County Recorder of San Diego County (Imperial County was not organized until later). Each of these appropriations was for a flow of 10,000 cubic feet per second, which exceeds 7 maf annually on a continuous flow basis. (As constructed, the capacity of the All-American Canal immediately below Pilot Knob is 10,000 cfs.) The appropriative rights of the individuals were ultimately transferred to the California Development Company, mostly during the year of 1899.

The validity of these rights were questioned during the turn of the century by the Reclamation Service (formed in 1902 by the federal government) on the basis that the Colorado River was a navigable river and, therefore, no water rights could be established except upon approval by the Congress. Evidently, the Reclamation Service was considering the construction of a major flood control and water supply project on the Colorado River as early as 1903, at the behest of dissatisfied Imperial Valley landowners. The attack on the California Development Company's water rights appears to have been a ploy for the Reclamation Service to devalue and ultimately to acquire those rights. Legislation confirming the navigability of the Colorado River (and the United States' ownership of its waters) was introduced in the Congress, but was never enacted.

### **3. UNITED STATES CONTRACT.**

Since 1918, Imperial has entered into several contracts with the United States, the most important of which is a contract dated December 1, 1932 (the "1932 Contract").<sup>5</sup> The 1932 Contract provided for the construction of the Imperial Dam and the

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<sup>5</sup> The other major contracts are:

(Footnote Continued on Next Page.)

All-American Canal. Imperial undertook to pay the cost of the works, and to include within its boundaries certain public lands of the United States and other specified lands.

Accordingly, in 1942, Imperial expanded its boundaries to include 271,588 acres of the unpatented public lands.

The United States undertook to deliver to the Imperial Dam the water which would be carried by the new canal to the various lands to be served by it. Pursuant to this contract, the United States constructed the Imperial Dam in the Colorado River -- upriver from Imperial's historical point of diversion -- and the All-American Canal connecting the Dam and Imperial Valley.<sup>6</sup>

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(Footnote Continued from Previous Page.)

A contract dated October 23, 1918, providing for the survey and construction of Laguna Dam (part of the Yuma Project in California and Arizona) and diversion of all water needed by the District. Pursuant to this contract, the District agreed to build an all-American canal, but never did so. Nevertheless, the District assumed and paid the \$1.6 million cost of the Laguna Dam for the right to use the Dam.

A contract dated February 14, 1934, entitled "Agreement of Compromise between Imperial Irrigation District and Coachella Valley County Water District," providing for CVWD's leasing its All-American Canal power privileges to Imperial and the dismissal of CVWD's challenge to Imperial's court action to validate the 1932 Contract. Under the provisions of this agreement, CVWD subordinated its Colorado River rights, as set forth in the Seven-Party Agreement, to Imperial Irrigation District.

A contract dated March 4, 1952, which, among other things, transferred the operation and maintenance of the completed works to Imperial.

A contract dated March 27, 1978, providing for the relinquishment of capacity in the Coachella Canal and adjustment of the repayment obligation pursuant to Sections 102(c) and (d) of the Colorado River Basin Salinity Control Act, dated June 24, 1974.

<sup>6</sup> The All-American Canal system was not declared completed until 1952. By that time, pursuant to the 1932 Contract, the care, operation, and maintenance of the system, with specified exceptions, had been transferred to Imperial, although title to the Imperial Dam and the canal remained in the United States. Repayment of construction charges commenced on March 1, 1955. Imperial's financial obligation was \$25,020,000, payable in 40 annual installments on a graduated basis, without interest. All contract installments have been paid in full, generally from committed net power revenues derived from the sale of electrical power generated by hydro-electrical facilities on the All-American Canal.

The 1932 Contract was approved in all respects in validation proceedings by the Superior Court of Imperial County on July 1, 1933. *Hewes v. All Persons*, (No. 15460), and *Molan v. Imperial Irrigation District*, (No. 15454), Superior Court, Imperial Valley County, California, unreported. An appeal was taken to the California Supreme Court by the Coachella Valley County Water District. By stipulation of the parties, the appeal was dismissed by the Supreme Court on February 14, 1934, pursuant to the Agreement of Compromise having been entered into between the two districts.<sup>7</sup>

The 1932 Contract contains provisions by which the Secretary has ostensibly imposed certain restrictions on the use of Colorado River water by Imperial. In this regard, Article 17 of the 1932 Contract specifies that

“The United States shall, from storage available in the reservoir created by Hoover Dam, deliver to the District each year at a point in the Colorado River immediately above Imperial Dam, so much water as may be necessary to supply the District a total quantity, including all other waters diverted for use within the District from the Colorado River, in the amount and with priorities in accordance with [the Seven-Party Agreement]. . . . As far as reasonable diligence will permit said water shall be delivered as ordered by the District, and as reasonably required for potable and irrigation purposes *within the boundaries of the District* in the Imperial and Coachella Valleys in California. . . .”  
(Emphasis added. )

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<sup>7</sup> As an historical aside, the 1932 Contract was not the original contract as proposed by the Secretary. The original contract contemplated that the Coachella Valley County Water District would be merged into the Imperial Irrigation District and that the merged district would be served under a single contract with Colorado River water via the All-American Canal. While this contract was approved by IID, the Coachella Valley landowners did not want a merger due to their concerns about IID's financial condition. The question of CVWD's water service was settled by CVWD and IID under the terms of a Agreement of Compromise dated February 14, 1934. This Agreement also subordinated CVWD's water rights to IID's water rights under the Seven-Party Agreement. Agreement of Compromise, § 15. Furthermore, the Agreement of Compromise “provided that it would not effect nor impair any rights of either party to the waters of the Colorado River.” *1934 Compromise Agreement*, § 16

Thus, the 1932 Contract for the delivery of Colorado River water to Imperial specifies the point of diversion (Imperial Dam), the place of use (within Imperial's boundaries), and the kind of use (potable and irrigation purposes).

With respect to Imperial's historical water rights, Article 17 of the 1932 Contract provides further that it is for

"permanent water services but is subject to the condition that Hoover Dam and [Lake Mead] shall be used for irrigation and domestic uses and *satisfaction of perfected rights in pursuant of Article VIII of the [1922 Compact]* . . ." (Emphasis added.)

And to make the delivery of water under the 1932 Contract even clearer, Article 17 also provides that

"This contract is without prejudice to any other or additional rights which the District may now have not inconsistent with the foregoing provisions of this article, or may hereafter acquire in or to the waters of the Colorado River."

The United States is also authorized under Article 24 of the 1932 Contract to "prescribe and enforce rules and regulations not inconsistent with this contract, governing the diversion and delivery of water hereunder to the District and to other contractors." Article 29 provides that the contract is to be construed in a manner fully consistent with the 1922 Compact. Article 38 provides that "[n]o interest in this contract is transferable by the District to any other party, and any such attempted transfer shall cause this contract to become subject to annulment at the option of the United States."

#### **4. PRESENT PERFECTED RIGHTS.**

Based on Imperial's historical appropriative water rights acquired in accordance with California law, Imperial has a "present perfected right" to 2.6 maf of Colorado water annually. In general, these rights are unaffected by the 1922 Compact, the

1928 Project Act, the 1931 Seven-Party Agreement, the 1932 Contract or the Supreme Court decision and decrees in *Arizona v. California*.

a. 1922 Compact.

In the 1922 Compact, the Upper and Lower Basin States were acutely aware that certain parties had acquired rights to the water of the Colorado River under the doctrine of prior appropriation. See *Wyoming v. Colorado*, 259 U.S. 419 (1922).

Consequently, the Article VIII of the Compact provides that

"Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact."

Herbert Hoover, the federal representative of the Colorado River Commission, stated in his analysis of the Compact that this sentence

"is a recognition of the validity of present perfected rights to the use of water and is inserted to obviate any fears on the part of present users that their rights might be impaired by the compact."

The Colorado River Compact, Analysis by Honorable Herbert Hoover, Extracted from the Congressional Record, January 30, 1923, pp. 2710-2713.<sup>8</sup>

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<sup>8</sup> The Article VIII provision of the Compact, therefore, resulted from the concern of the farmers of Imperial Valley that after two decades of productive reliance on the importation of Colorado River water, their existing water rights might be impaired by the Compact allocation.

Delph Carpenter, a Colorado draftsman of the Compact, testified in hearings on a precursor of the Project Act as follows:

"During the deliberation of the Colorado River Commission at Santa Fe, and after 10 days' work, a sketch or outline of the progress was released to the press, stating what had happened and the proposed terms of a treaty . . . . The Imperial Valley representatives were immediately responsive. They came before the Commission and presented their claims with great vigor . . . ."

(Footnote Continued on Next Page.)

Article VIII of the Compact also sought to minimize the effect that the exercise of these present perfected rights could have on the Upper Basin by providing that whenever storage capacity of 5,000,000 af has been created, then claims of such perfected rights by appropriators or users in the Lower Basin against appropriators or users in the Upper Basin are to be satisfied from such storage. With the construction of Hoover Dam, storage in Lake Mead exceeded 30 maf, and water to satisfy perfected rights now comes from releases from storage.

b. Project Act.

The term "present perfected rights" next appeared in Section 6 of the Project Act, which required the Secretary to satisfy present perfected rights in allocating Colorado River water that would be developed as authorized by the Project Act. Accordingly, the first sentence of Section 6 requires the Secretary to operate the dam and reservoir, in part, for the "satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River Compact." Section 4(a) of the Project Act is also relevant in that California's annual limitation to 4.4 maf includes "all uses under contracts made under the provisions of this act and all water necessary for the supply of any rights which may now exist."

c. Seven-Party Agreement.

The purpose of the 1931 California Seven-Party Agreement was to provide a more definite internal allocation of the water claimed by California. Indeed, the Secretary,

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In view of that claim, coming as it did from people who cultivated upwards of half a million acres of very valuable land, Article VIII of the compact was drawn at the last session of the proceedings. Hearings pursuant to S. Res. 320 before the Senate Committee on Irrigation and Reclamation, 68th Cong., 2d Sess., pt. 1, p. 678 (1925).



during contract negotiations with Imperial, viewed the allocation among California users as "a matter which the State, and not the Department of the Interior, should work out and recommend to the Department." *Letter from Ray Wilbur, Secretary of the Department of the Interior, dated November 5, 1930, to Imperial Irrigation District.* In response to this request, the principal California claimants to waters of the Colorado River executed the Seven-Party Agreement after nine months of negotiations.

The Agreement specifies that the "waters of the Colorado River available for use within the State of California under the Colorado River Compact and the Boulder Canyon Project Act" shall be apportioned in amounts and with priorities stipulated. No provision in the Seven-Party Agreement expressly requires that water allocated to a party, but unused by that party, shall inure to the party next in line in the priority scheme. Nonetheless, the Secretary and the parties to the Agreement have at all times construed it in this way.

d. Arizona v. California.

The Supreme Court in its 1964 decree in *Arizona v. California*, 376 U.S. 340,341 (1964) adopted the Special Master's proposed definitions for perfected rights in Article I(G) and I(H), as follows:

"(G) 'Perfected right' means a water right acquired in accordance with State law, which right has been exercised by the actual diversion of a specific quantity of water that has been applied to a defined area of land or to definite municipal or industrial works, and in addition shall include water rights created by the reservation of mainstream water for the use of Federal establishments under Federal law whether or not the water has been applied to beneficial use."

"(H) 'Present perfected rights' means perfected rights as here defined, existing as of June 25, 1929, the effective date of the Boulder Canyon Project Act."

Subsequently, the Supreme Court quantified Imperial's present perfect rights in its 1979 decree in *Arizona v. California*, 439 U.S. 419, 429 (1979), as follows:

"in annual quantities not to exceed (i) 2,600,000 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 424,145 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less, with a priority date of 1901."

With the Supreme Court decree, Imperial's present perfected rights were confirmed. These rights are important because of the provisions of Article II(B)(3) of the 1964 decree. *Arizona v. California*, 376 U.S. 340, 342 (1964). It provides firm guidance to the Secretary in allocating water in any year in which there is less than 7.5 maf of mainstream water available to the Lower Basin. The Secretary must first provide for satisfaction of present perfected rights in the order of their priority dates without regard to State lines and, after consultation with major contractors and such representatives as the States may designate, may apportion the amount remaining available for consumptive use in a manner consistent with the Project Act as interpreted by the Supreme Court and with other federal statutes, except that California cannot be apportioned more than 4.4 maf including all present perfected rights.

After the Supreme Court's decision in *Arizona v. California*, the Supreme Court had the occasion to expound on the characteristics of Imperial's present perfect rights in the case of *Bryant v. Yellen*, 447 U.S. 352 (1980). In that case, the Supreme Court held that Imperial was not subject to the excess land provisions of federal reclamation law (then 160 acres, now 960 acres). In reaching this conclusion, the United States Supreme Court rejected the Ninth Circuit Court of Appeals' reasoning that the excess land provisions could

be applied to the individual landowners within the district since Imperial, not the landowners, held the perfected rights to the Colorado River.<sup>9</sup>

In support of its decision in *Byrant v. Yellen* the Supreme Court cited its prior decision in *Arizona v. California*, 373 U.S. 546, 584, for finding that:

“one of the most significant limitations on the Secretary's power under the Project Act was the requirement that he satisfy present perfected rights, a matter of great significance to those who had reduced their water rights to beneficial use prior to 1929. Accordingly, in our initial decree, the perfected right protected by § 6 [of the Project Act] was defined with some care: a right that had been acquired in accordance with state law and that had been exercised by the actual diversion of a specific quantity of water and its application to a defined area of land.”

*Bryant v. Yellen*, 447 U.S. 352, 369 (1980), quoting in part *Arizona v. California*, 373 U.S. 546, 584 (1963).

Moreover, the Supreme Court held that the Secretary's power under Section 5 of the Project Act to contract for the storage of water and for its delivery at certain points on the Colorado River, did not give the Secretary unfettered discretion to administer Imperial's present perfected rights. To the contrary, the Court noted that its prior decision in *Arizona v. California*

“clearly recognized that § 6 of the Project Act, requiring satisfaction of present perfected rights, was an unavoidable limitation on the Secretary's power and that in providing for these rights the Secretary must take account of state law. In this respect, *state law was not displaced by the Project Act and must be consulted in determining the content and*

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<sup>9</sup> The Supreme Court wholly rejected the Court of Appeals' view that “denying water to excess lands not sold would merely require reallocation of the water among those eligible to receive it and would not reduce the water which the District was entitled to have delivered in accordance with its perfected rights.” 447 U.S. at 369.

*characteristics of the water right that was adjudicated to the District by our [1979] decree."*

*Bryant v. Yellen*, 447 U.S. at 370-371 (emphasis added).

It was the specific recognition by the 1922 Compact and the Project Act of Imperial's present perfected rights, which at the time of the passage of the Project Act were not subject to any federal reclamation law, that led the Supreme Court to conclude that the excess land provisions did not apply to lands within Imperial with present perfected rights.<sup>10</sup> In reaching this conclusion, the Supreme Court noted that to hold otherwise "is to misunderstand the Project Act and the substantive meaning of 'present perfected rights' as defined by this Court's [1964] decree." *Id.* at 372. To subject Imperial's landowners to the excess land provisions of federal reclamation law would "go far toward emasculating the substance, under state law, of the water right decreed to the District, as well as substantially limiting its duties to, and the rights of, the farmer-beneficiaries in the District." *Id.* at 373.<sup>11</sup>

##### 5. State Board Decision 1600.

In 1980, John Elmore, a private citizen, requested the Department of Water Resources to investigate alleged misuse of water by Imperial which had resulted in a rise in

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<sup>10</sup> Furthermore, while the Supreme Court recognized that an individual landowner may not, under California law, have "a permanent right to any specific proportion of the water held in trust by the District ... there is no doubt that prior to 1929 the District, in exercising its rights as trustee, delivered water to individual farmer beneficiaries without regard to the amount of land under single ownership." *Id.* at 371.

<sup>11</sup> As the Special Master observed in *Arizona v. California*, "the congressional intention was to insure that persons actually applying water to beneficial use would not have their uses disturbed by the erection of the dam and the storage of water in the reservoir." Special Master Report 309, cited in *Bryant v. Yellen*, 447 U.S. at 373, n. 24.

the level of the Salton Sea, flooding Elmore's farmland.<sup>12</sup> After an investigation, an initial conclusion of water waste, and unproductive communications with Imperial, the Department of Water Resources referred the matter to the State Water Resources Control Board (the "*State Board*") for investigation and action.

The State Board held a hearing over several days, and on June 21, 1984, issued its Decision 1600 regarding misuse of water by Imperial. After finding that Imperial's failure to implement additional water conservation measures was unreasonable and a misuse of water under the California Constitution, article X, section 2, the State Board ordered Imperial to undertake various conservation measures. The State Board gave reconsideration to its Decision 1600 upon the request of several parties, including Imperial. By Order No. WR 84-12 dated September 20, 1984, all modifications sought were denied and the previous Decision 1600 was affirmed.

In Decision 1600, the State Board found that approximately one million af per year of Colorado River water enters the Salton Sea as irrigation return flow from Imperial. With that finding, the State Board ruled that

"[t]his large quantity of fresh water is lost to further beneficial consumptive use and has contributed to the flooding of property adjoining the Salton Sea. Following diversion of major quantities of water by the Central Arizona Project, which is scheduled to begin in late 1985 or 1986, there will be insufficient water available from the Colorado River to satisfy the existing level of demand of California water users. Although [Imperial] has taken some steps to conserve water, the evidence establishes that there are additional practical

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<sup>12</sup> Imperial has been subject to several inverse condemnation, trespass and damage actions due to the rising levels of the Salton Sea. For the most part, Imperial has lost these actions and, as a result, has suffered significant damage awards. See, e.g., *Salton Bay Marina, Inc. v. Imperial Irrigation District*, 172 Cal. App. 3d 914 (1985) and *Beaty v. Imperial Irrigation District*, 186 Cal. App. 3d 897 (1986).

measures available to reduce the present losses of water within the District. Under the circumstances of this case, the [State] Board concludes that the failure to implement additional water conservation measures at this time is unreasonable and constitutes a misuse of water under Article X, Section 2 of the California Constitution and Section 100 of the California Water Code."

*Decision 1600*, p. 90. Later, in September, 1988 the State Board issued a supplementary order, Order No. WR 88-20, mandating Imperial to conserve 20,000 af per year by 1991 and 100,000 af per year by 1994.

These decisions by the State Board led to the Metropolitan/Imperial Water Conservation Agreement of 1990. The Agreement requires Metropolitan to finance Imperial's conservation projects in the amount of \$92 million over five years (lining canals, building reservoirs and installing automated equipment), and to pay \$23 million to offset indirect impacts of the project, \$3 million per year for operation and maintenance costs, and \$200,000 for liability costs. Total cash outlays is estimated to be about \$220 million. In exchange, Metropolitan will receive the conserved water, estimated at 106,000 af per year, for 35 years.<sup>13</sup>

### **III. CALIFORNIA LAW ALLOWS AND, INDEED, ENCOURAGES THE TRANSFER OF IID'S COLORADO RIVER WATER.**

#### **A. CALIFORNIA WATER LAW CONCERNING TRANSFERS**

To understand the irrelevance of both the Seven-Party Agreement and the 1934 Compromise Agreement to a IID-SDCWA water transfer, one must understand fully the nature of an appropriative water right in California and the state policy encouraging

water transfer. An appropriative water right gives a designated water user the right to divert and use a certain quantity of water with a specified priority relative to other water users and with a specified place and purpose of use. At any point in time, the appropriative right thus is "appurtenant" to a specific area or parcel of land. The appropriation permits for both the State Water Project (SWP) and the Central Valley Project (CVP), for example, specify that the project water shall be used in defined service areas.

Such specifications, however, do not prevent transfers of water. California law has long recognized the right of appropriators to transfer their water for use by others in new locations and for new purposes. In fact, MWD is currently negotiating to transfer CVP water for use outside the CVP service area and has never suggested that the specification of a service area in the CVP appropriation permits precludes such transfers. Water transfers that change the place or purpose of use are permissible so long as the change will not injure the existing water rights of other appropriators or lawful water users.

Since 1980, California has moved beyond merely authorizing transfers and has actively encouraged and supported market transfers. The state legislature has expressly found that "voluntary water transfers between water users can result in a more efficient use of water, benefiting both the buyer and seller" <sup>14</sup> and declared that the State's

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<sup>13</sup> Without discounting for the future outlay of funds, the cost of water is about \$60 af per year [\$220,000,000 (106,000 af per year x 35 years)]. Metropolitan officials have stated that the cost is about \$188 per af, after pumping and treatment costs are added

<sup>14</sup> California Water Code § 475.

"established policy" is to "facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import."<sup>15</sup>

In line with these findings and policies, the legislature has authorized all water suppliers, including IID, to transfer water that is conserved by their users to "any other water supplier or user *inside or outside the [transferor's] service area*."<sup>16</sup> (Emphasis added.) In the fear that someone might argue that a temporary transfer of conserved water is inconsistent with the transfer's obligation to make beneficial use of its water under the terms of its appropriation, the legislature also has provided that such a transfer "is deemed to be a beneficial use" of the water by the transferor and shall not "cause a forfeiture, diminution, or impairment" of the transferor's water rights.<sup>17</sup>

Anticipating perhaps that someone might try to argue that Colorado River water is different, the California legislature specifically has reassured IID that it can transfer its Colorado River water without fear of anyone arguing that IID thereby has violated the terms and conditions of its water rights:

"Notwithstanding any other provision of law, where any ... public agency ... undertakes any water conservation effort ... which results in reduced use of Colorado River water within the Imperial Irrigation District, no forfeiture, diminution, or impairment of the right to use the water conserved shall occur,

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<sup>15</sup> California Water Code § 109(a).

<sup>16</sup> California Water Code § 1745.04 (emphasis added); see generally California Water Code §§ 1745-1745.09.

<sup>17</sup> California Water Code § 1745.07; see also California Water Code § 1011.



except as set forth in the agreements between the parties and the United States.”<sup>18</sup>

#### **B. THE SENIOR PEDIGREE OF IID’S WATER RIGHTS**

As early as 1885, farmers in the IID Valley diverted water from the Colorado River and brought it to the valley for irrigation purposes. IID was formed in 1911 and ultimately acquired all Colorado River water rights in the valley. By 1929, IID was supplying Colorado River water to almost 425,000 acres of land. Under California law, IID thereby gained an appropriative right to the water that it was diverting and distributing for use in the valley.

The federal government, as well as the seven Colorado River states, have repeatedly recognized and safeguarded this state water right. When the Colorado River states signed the Colorado River Compact in 1922 apportioning the river’s water between the upper and lower basins, they explicitly provided that the Compact would not impair the “present perfected rights” held by IID and others.<sup>19</sup>

When Congress passed the Boulder Canyon Project Act in 1929 authorizing construction of new storage and power facilities and federal distribution of water, Congress again expressly protected present perfected rights. Section 6 of the Project Act, for example, insisted that the project facilities were to be used:

“First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and *satisfaction of present perfected rights in pursuance of Article*

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<sup>18</sup> California Water Code § 1012.

<sup>19</sup> Colorado River Compact, art. VIII.

*VIII of said Colorado River compact; and third, for power.*"<sup>20</sup>  
(Emphasis added.)

Congress approved all terms of the Colorado River Compact,<sup>21</sup> including its protection of present perfected rights, and emphasized that all parties must "observe and be subject to and controlled" by the Compact.<sup>22</sup>

Congress also recognized California's continuing authority to determine the content and character of present perfected rights and other rights held under state law to Colorado River water. In section 18 of the Project act, Congress emphasized that nothing in the Act

"shall be construed as interfering with such rights as the States had on December 21, 1928, ... to adopt such policies and enact such laws as they deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River Compact or other interstate agreement."<sup>23</sup>

#### **C. THE ALLOCATIONS OF THE SEVEN-PARTY AGREEMENT**

In order to write contracts for the delivery of water from the Boulder Canyon Project, the Department of the Interior needed to determine how much water to deliver to each California entity claiming an interest in Colorado River water. At that time, however, the Colorado River rights of IID and other entities had not yet been adjudicated. Because the rights of IID and other agricultural users generally predated the California water permit

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<sup>20</sup> Boulder Canyon Project Act, § 6, 43 U.S.C. § 617e (emphasis added).

<sup>21</sup> Boulder Canyon Project Act, § 13(a), 43 U.S.C. § 6171(a).

<sup>22</sup> Boulder Canyon Project Act, § 8(a), 43 U.S.C. § 617g.

<sup>23</sup> Boulder Canyon Project Act, § 18, 43 U.S.C. § 617q.

system, the Department of the Interior also could not consult state administrative records to determine the size and relative priority of the various water rights.

As the federal government recognized, the proper allocation of water among California users was at root an issue of state law. In November 1930, Secretary of the Interior Ray Lyman Wilbur therefore wrote to the California State Division of Water Rights and the various water entities asking the State to recommend how the water should be allocated.<sup>24</sup> In passing, Wilbur suggested that the State “presumably” would want to seek an “agreement of all interests” in developing its recommendation.<sup>25</sup>

Resulting negotiations among the various water entities produced the Seven-Party Agreement.<sup>26</sup> Signed by the entities on August 18, 1931, the Agreement was a “Request” to the State to “apportion California’s Share of the Water of the Colorado River” for purposes of the federal water contracts.<sup>27</sup> The Agreement did not purport to apportion the water itself. Nor did the parties claim the power to do so. Instead, the Agreement merely requested the State Division of Water Resources to recognize the specific “apportionments and priorities” set out in the Agreement and recommend them to the

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<sup>24</sup> Letter of the Secretary Requesting Recommendation of the State in Effecting a Water Allocation, November 5, 1930, in *The Hoover Dam Documents*, app. 1002 (Ray Lyman Wilbur & Northcut Ely, eds. 1948). On February 21, 1930, the major entities had reached a written “understanding” on how the Colorado River water should be divided between agricultural users and MWD, but the Department also needed guidance on how to allocate water among the various water agencies. Agreement of February 21, 1930, *Id.*, app. 1001.

<sup>25</sup> Agreement of February 21, 1930, in *The Hoover Dam Documents*, app. 1002, at A477.

<sup>26</sup> Seven-Party Agreement of August 18, 1931, in *The Hoover Dam Documents*, app. A479.

<sup>27</sup> *Id.*, at A479. The full title of the Agreement was “Requesting the Division of Water Resources of the State of California to Apportion California’s Share of the Waters of the Colorado River among the Various

(Footnote Continued on Next Page.)

federal government "for insertion in any and all contracts for water made." The ultimate determination of actual apportionments and priorities properly was left to the government.

The Agreement, moreover, narrowly focused on recommended quantities and priorities, and did not purport to address the general terms and conditions of the parties' water rights. The Agreement never even obliquely addressed the transferability of the water rights. As noted, the Agreement requested the State to recognize and recommend the "apportionments and priorities" set out in the Agreement. The listing of apportionments and priorities, written to be inserted in the federal water contracts, began by noting its narrow purpose:

"The waters of the Colorado River available for use within the State of California under the Colorado River compact and the Boulder Canyon project act shall be apportioned to the respective interests below named and *in amounts and with priorities* therein named and set forth...."<sup>28</sup>

The Agreement never suggested that the listing was designed to accomplish any other purpose.

Recognizing the long established water rights of agricultural users in IID, the Palo Verde Irrigation District, and the Yuma reclamation project, the Agreement requested that these users be awarded the first three priorities to Colorado River water, up to a total of 3.85 million acre feet ("*maf*") per year. MWD, Los Angeles, and San Diego, none of which enjoyed a perfected right to Colorado River water, were to receive the next 1.1 million, with

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(Footnote Continued from Previous Page.)

Applicants and Water Users Therefrom in the State, Consenting to Such Apportionments, and Requesting Similar Apportionments by the Secretary of the Interior of the United States "

<sup>28</sup> *Id.*, at A480.

any excess going again to IID and Palo Verde water users. To clarify who was receiving the IID apportionment, the Agreement noted that IID's priority was for the "Imperial Irrigation District and other lands under or that will be served from the All-American Canal in IID and CVWD Valleys." No where, however, did the Agreement suggest that IID's water could not be transferred under state law for use outside the IID and CVWD valleys.

**D. THE LIMITS OF THE 1934 COMPROMISE AGREEMENT.**

CVWD, unlike IID, did not use Colorado River water prior to the Boulder Canyon Project. At the time of the Seven-Party Agreement, however, the signatories expected that CVWD landowners would join IID. Rather than providing separate allocations and priorities for IID and CVWD, the Seven-Party Agreement therefore recommended combined water allocations for "Imperial Irrigation District and other lands under or that will be served from the All-American Canal in IID and CVWD Valleys." The water quantities recommended in the Seven-Party Agreement reflected that water would go to both IID and CVWD.

CVWD landowners, however, ultimately chose not to petition for inclusion in IID. In order to resolve the resulting questions, IID and CVWD entered into a "Compromise Agreement" on February 14, 1934.<sup>29</sup> The 1934 Compromise Agreement addressed a number of issues, including CVWD's right to enter into its own water contract with the federal government and relative rights to power generated by the All American Canal. Like the Seven-Party Agreement, the 1934 Compromise Agreement never even mentioned the issue of water transfers.

One of the key purposes of the 1934 Compromise Agreement was to clarify how the recommendations in the Seven-Party Agreement should be applied given the changed circumstances. IID and CVWD chose not to quantify the specific amounts of water to which each district was entitled. The 1934 Compromise Agreement instead recognized that IID, as the holder of the superior claim to Colorado River water, would have first priority to water delivered pursuant to federal contract through the All-American Canal:

"Imperial Irrigation District shall have the prior right for irrigation and potable purposes only, and exclusively for use in the IID Service Area, as hereinafter defined, or hereunder modified, to all waters apportioned to said Imperial Irrigation District and other lands under or that will be served from the All-American Canal in IID and CVWD Valleys as provided in the third and sixth priorities set out in the recommendation of the Chief of the Division of Water Resources of the State of California, as contained in [the contract between IID and the federal government]".<sup>30</sup>

CVWD would receive water "[s]ubject to said prior right of Imperial Irrigation District."

Although CVWD has suggested that the phrasing "exclusively for use in the IID Service Area" prevents IID from transferring water outside the "IID Service Area," this language simply parallels the specification of a place of use in state appropriation permits. As discussed above, such specifications have never precluded transfers. Neither the specific language nor the history of the 1934 Compromise Agreement suggest that the

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(Footnote Continued from Previous Page.)

<sup>29</sup> Agreement of Compromise, February 14, 1934, Between Imperial Irrigation District and Coachella Valley County Water District, in *The Hoover Dam Documents*, app. 1107.

<sup>30</sup> 1934 Compromise Agreement, § 15, in *The Hoover Dam Documents*, app. 1107, at A624.

parties intended a different consequence here. Transfers were not an issue at the time the 1934 Compromise Agreement was signed and were not addressed in the Agreement.

**E. STATE LAW CONTROLS THE CONTENT AND CHARACTERISTICS OF IID'S WATER RIGHTS**

**1. IID'S PRESENT PERFECTED RIGHTS**

Subsequent judicial and administrative determinations have superseded both the Seven-Party and 1934 Compromise Agreements and recognized that IID's right to 2.6 maf of Colorado River water ultimately rests on appropriative rights perfected under state law prior to the 1929 Boulder Canyon Project Act. Although IID enjoys rights to Colorado River water under both its contract with the federal government and state appropriative permits issued in 1950, these rights are ancillary to IID's "present perfected rights" which both the Colorado River Compact and the Project Act confirm and safeguard. As the United States Supreme Court has held, moreover, state law determines the "content and characteristics" of IID's present perfected rights.

In response to the various water entities' request in the Seven-Party Agreement, the State Water Rights Board ultimately issued water permits incorporating the Agreement's proposed apportionment. Critically, IID's permit specifies that the apportionment "supplements and is without prejudice to rights held or claimed by applicant under [its] contract with the United States, *or under appropriation, user [sic], or otherwise.*"<sup>31</sup> (Emphasis added.)

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<sup>31</sup> State of California Water Rights Board, Permits No. 7643, 7644, 7645, 7646 & 7649 (Jan. 6, 1950) (emphasis added)

The federal government has consistently recognized that contract rights to Colorado River water are subordinate to IID's and others' present perfected rights.<sup>32</sup> Both the Colorado River Compact and the Boulder Canyon Project Act recognized and promised to protect perfected rights. IID's December 1, 1932 contract with the federal government, after incorporating the apportionment set out in the Seven-Party Agreement, emphasizes that the contract rights are "without prejudice to any other or additional rights which the District may now have not inconsistent with the foregoing provisions...."<sup>33</sup> Paralleling the terms of the Project Act, the IID contract also notes that the delivery of water

"is subject to the condition that Hoover Dam and Boulder Canyon Reservoir shall be used; First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and *satisfaction of perfected rights*; and third, for power."<sup>34</sup> (Emphasis added.)

MWD and CVWD have long recognized the unique status of IID's present perfected rights to Colorado River water. In their opening brief in *Arizona v. California*,

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<sup>32</sup> In a letter dated July 31, 1930, the Acting Secretary of the Interior wrote to the Palo Verde Irrigation District wrote: "If no stored water is required by the Palo Verde Irrigation District, no contract between that district and the United States will be required. Those possessed of prior rights to the unregulated flow of the river will be privileged to continue the enjoyment of those rights without interference by storage in the Boulder Canyon reservoir." Cited in Opening Brief of the California Defendants in Support of their Exceptions to the Report of the Special Master in *Arizona v. California* 172-173 (May 22, 1961) (hereinafter "*Opening Brief*").

<sup>33</sup> Contract for Construction of Diversion Dam, Main Canal, and Appurtenant Structures and for Delivery of Water, December 1, 1932, in *The Hoover Dam Documents*, app. 1106, at A608. As MWD, CVWD, and others noted in their Opening Brief in *Arizona v. California*, "Water delivery contracts neither supplant nor modify equitable apportionment and priority principles." Opening Brief, *Id.*, at 68.

<sup>34</sup> Contract for Construction of Diversion Dam, Main Canal, and Appurtenant Structures and for Delivery of Water, December 1, 1932, in *The Hoover Dam Documents*, app. 1106, at A608 (emphasis added). Section 29 of the contract similarly notes that "This contract is made upon the express condition and with the express understanding that all rights based upon this contract shall be subject to and controlled by the Colorado River Compact." *Id.*, at A612.



MWD, CVWD, and other California water interests argued that “[h]olders of pre-existing rights in natural flow available for consumptive use without Hoover Dam regulation” did not even need federal contracts.<sup>35</sup> If federal contracts were needed under the Boulder Canyon Act, moreover, MWD and CVWD argued that “holders of ‘present perfected rights,’ at least, are **entitled** to a contract.”<sup>36</sup>

In *Arizona v. California*, the United States Supreme Court finally adjudicated the Colorado River and held that IID enjoys present perfected rights to 2.6 maf of Colorado River water, separate and superior to any other entitlements or rights that it might hold based on contracts or agreements. As the Court noted in its original opinion, “one of the most significant limitations” in the Project Act is that “the Secretary is required to satisfy present perfected rights, a matter of intense importance to those who had reduced their water rights to actual beneficial use at the time the Act became effective.”<sup>37</sup> In its decree, the Court therefore ordered that, where there is insufficient water to satisfy all decreed rights, the federal government must satisfy present perfected rights first.<sup>38</sup> In its 1979 supplemental decree, the Court adjudicated and quantified IID’s present perfected right.<sup>39</sup> Because neither MWD nor CVWD was using Colorado River water before the Boulder Canyon Project, their water rights are subordinate to IID’s present perfected rights.

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<sup>35</sup> Opening Brief, *Id.*, at 169.

<sup>36</sup> *Id.* At 174 (emphasis added).

<sup>37</sup> *Arizona v. California*, 373, U.S. 546, 584 (1963).

<sup>38</sup> *Arizona v. California*, 376 U.S. 340, 342 (1964).

<sup>39</sup> *Arizona v. California*, 439 U.S. 419, 428-429 (1979).

The United States Supreme Court's most recent and extensive discussion of IID's water rights arose in *Bryant v. Yellen*.<sup>40</sup> There, after recounting the history of IID's water right discussed above, a unanimous Court reaffirmed that the federal government has an "obligation," based on both the Colorado River Compact and the Project Act, to "satisfy present perfected rights in IID Valley."<sup>41</sup> The Court, moreover, emphasized that IID's "perfected right is a water right originating *under state law*," based on IID's use of water for beneficial purposes prior to 1929.<sup>42</sup> As a result, IID's "water rights are to be interpreted in the light of state law," which determines "the content and characteristics of the water right that was adjudicated to the District."<sup>43</sup>

## **2. IID'S OTHER COLORADO RIVER WATER RIGHTS**

IID's rights to water from the Colorado River beyond its present perfected rights also stems from state law, not the Seven-Party or 1934 Compromise Agreements. As discussed above, the Seven-Party Agreement merely *requested* the State to recognize a specific set of apportionments and priorities. The 1934 Compromise Agreement was primarily an addendum to the Seven-Party Agreement. IID's water rights themselves rest on state law, not contractual agreement.

As reflected in both the Boulder Canyon Act and subsequent Supreme Court decisions, state law also controls the transferability of IID's additional water rights. The

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<sup>40</sup> 447 U.S. 352 (1980).

<sup>41</sup> *Id.* At 369

<sup>42</sup> *Id.* At 369-370 (emphasis added).

<sup>43</sup> *Id.* At 371-372.

Supreme Court has repeatedly emphasized the "consistent thread of purposeful and continued deference to state water law" running through federal legislation.<sup>44</sup> In drafting the Boulder Canyon Act, Congress was extremely careful to protect state authority over water used within each state's borders to the degree consistent with an interstate project. In section 8, for example, Congress noted that nothing in the act was meant "to affect or to in any way interfere with the laws of any State ... relating to the control, appropriation, use or distribution of water used in irrigation."<sup>45</sup>

Because of the multistate character of the Boulder Canyon Project, the Supreme Court in *Arizona v. California* held that state authority was limited to some degree by the Secretary of the Interior's discretion to determine with whom and on what terms to contract for water deliveries (subject again to the mandate to protect present perfected rights).<sup>46</sup> But the Court emphasized that states enjoy the power "to do things not inconsistent with the Project Act or with federal control of the river."<sup>47</sup> As the Supreme Court has confirmed more recently, state law controls water obtained from federal projects except where the state policy is inconsistent with Congressional directive.<sup>48</sup>

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<sup>44</sup> *California v. United States*, 438 U.S. 645, 653 (1978)

<sup>45</sup> 43 U.S.C. § 383.

<sup>46</sup> *Arizona v. California*, 373 U.S. 546, 585 (1963)

<sup>47</sup> *Id.* At 588.

<sup>48</sup> *California v. United States*, 438 U.S. 645 (1978).

#### IV. CONCLUSION:

##### A. THE SEVEN-PARTY AGREEMENT AND 1934 COMPROMISE AGREEMENT DO NOT CONSTRAIN AN IID TRANSFER.

As the history of IID's water rights and the Seven-Party Agreement make abundantly clear, neither the Seven-Party Agreement nor the 1934 Compromise Agreement constrain IID's right to sell water pursuant to California law. To begin, neither agreement purports to displace or modify state law regarding the use or characteristics of water rights to the Colorado River.<sup>49</sup> The Seven-Party Agreement had an explicit and limited purpose: to recommend the "apportionments and priorities" for water deliveries under federal water contracts. The principal purpose of the 1934 Compromise Agreement was similar: to specify IID's and CVWD's relative priorities to water delivered through the All-American Canal. The characteristics of each party's water rights was left properly to state law. Neither agreement even obliquely addresses the transferability of water rights. One can search the agreements for hours looking for any reference to water transfers, but the conclusion remains the same. Transfers were not an issue that the parties addressed, and the agreements do not modify state law on the issue.

In setting out particular apportionments, both agreements specify the type of determinants typically found in appropriative rights – the entity that would hold the water right, the quantity of water, the water's priority, and the location of use. As described

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<sup>49</sup> Any attempt to try to displace or modify state law would have raised serious legal questions. The state retains ultimate supervisory control over all its water and has both a constitutional and public trust responsibility to supervise and regulate the water's use in the public interest. See Cal. Const., art. X, § 2; California Water Code § 102; *National Audubon Society v. Superior Court*, 33 Cal. 3d 419, 189 Cal. Rptr. 346, 658 P.2d 709 (1983). As explained in Part I, the State has exercised its inherent authority over water rights to encourage and support voluntary water transfers – explicitly including transfers by IID of conserved water.

earlier, the Seven-Party Agreement requests a third priority for the "Imperial Irrigation District and other lands under or that will be served from the All-American Canal in IID and CVWD Valley." The 1934 Compromise Agreement recognizes IID's "prior right" to federal contract water "for irrigation and potable purposes only, and exclusively for use in the IID Service Area."

**B. CALIFORNIA LAW GOVERNS THE TRANSFER OF IID'S COLORADO RIVER WATER.**

The ostensible place of use restrictions asserted by CVWD do not, however, purport to limit transfers, however, any more than similar specifications in appropriation permits. As discussed above, appropriation permits always specify a water right holder and a place and purpose of use. Yet state law recognizes an appropriator's right to transfer water to a new user, new place of use, and new purpose. The place or purpose of use cannot be changed if that would injure the existing water rights of another appropriator or lawful water user, but an IID-SDCWA transfer would not reduce the amount of water available to other Colorado River water users. Both MWD and CVWD would continue to receive as much water as they currently have a right to enjoy.

Whatever independent importance the agreements might have had in the 1930s, the Supreme Court's decision and decrees in *Arizona v. California* have superseded the agreements and now form the basis for IID's water rights in the Colorado River. The Colorado River had not been adjudicated when the federal government wrote its contracts in the 1930s. The federal government therefore needed the State of California's recommendation on how to allocate water among California users in its contracts. The purpose of the Seven-Party Agreement was to request California to recommend the specific apportionments and priorities set out in that agreement. The 1932 Compromise Agreement

was primarily an addendum to the Seven-Party Agreement, necessitated by the decision of CVWD landowners not to join IID.

In 1964 and 1979, however, the United States Supreme Court issued decrees finally adjudicating the Colorado River and specifying IID's water rights. Under those decrees, IID enjoys "present perfected rights" in 2,600,000 af of water with a priority date of 1901. As the Supreme Court held in *Bryant v. Yellen*, state law controls the "content and characteristics of IID's rights, including the transferability of the rights.

MWD's and CVWD's federal water contracts prohibit MWD and CVWD from insisting on or receiving water in contravention of IID's present perfected rights. MWD's contract specifies that the United States

"shall not be obligated to deliver water to [MWD] when for any reason such delivery would interfere with the ... satisfaction of present perfected rights, in or to the waters of the Colorado River ... in pursuance of Article VIII of the Colorado River Compact, and this contract is made upon the express condition and with the express covenant that the right of [MWD] to waters of the Colorado River ... is subject to and controlled by the Colorado River Compact."<sup>50</sup>

CVWD's contract similarly provides that the United States and CVWD "shall observe and be subject to, and controlled by [the] Colorado River Compact, in the ... storage, diversion, delivery, and use of water."<sup>51</sup>

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<sup>50</sup> Contract for Delivery of Water Between MWD and the U.S. Department of the Interior, April 24, 1930, 6, in *The Hoover Dam Documents*, app 1007, at A500.

<sup>51</sup> Contract for Construction of Capacity in Diversion Dam, Main Canal and Appurtenant Structures and For Delivery of Water, October 15, 1934, in *The Hoover Dam Documents*, art 17, at A650. Article 28 also specifies that "This contract is made upon the express condition and with the express understanding that all rights based upon this contract shall be subject to and controlled by the Colorado River Compact." *Id.* at A654.

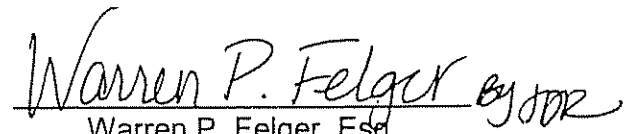
\* \* \*

For the foregoing reasons, Western Farms, L.P. supports the Petition, which should be granted by the State Board.

Dated September 23, 1999.

Respectfully submitted,

Felger & Associates

  
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### PROOF OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of Felger & Associates, 726 West Barstow Avenue, Suite 106, Fresno, CA 93704. I am over 18 years of age and am not a party to the within action. On September 23, 1999, I served a true copy of the following document:

**(1) COMMENTS OF WESTERN FARMS, L.P. ON PETITION FOR  
APPROVAL OF LONG-TERM CONSERVED WATER TRANSFER  
AGREEMENT AND CHANGE IN POINT OF DIVERSION, PLACE OF  
USE AND PRUPOSE OF USE**

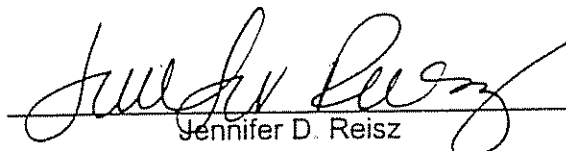
on the party(ies) in this action by placing a true copy thereof in a sealed envelope(s), addressed as follows:

#### SEE ATTACHED SERVICE LIST

	(BY FACSIMILE) I sent by facsimile transmission a copy to the person named above, to a facsimile machine maintained by such person at the facsimile machine telephone number as last given by that person on any document which he or she has filed in this matter, which constitutes serve in accordance with section 1013(e) of the Code of Civil Procedure.
X	(BY MAIL) I placed such sealed envelope, with postage fully repaid for first-class mail, for collection and mailing at Felger & Associates, Fresno, California following ordinary business practices. I am readily familiar with the practice of Felger & Associates for collection and processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.
	(BY OVERNIGHT DELIVERY) I placed each such sealed envelope, with delivery fees provided for, for collection and overnight delivery at Felger & Associates, Fresno, California following ordinary business practices. I am readily familiar with overnight delivery, said practice being that in the ordinary course of business, correspondence is deposited in the facility regularly maintained by the express services carrier the same day as it is placed for collection.
	(BY PERSONAL SERVICE) I personally delivered each sealed envelope, by leaving with the office receptionist or with a person having charge thereof, clearly labeled to identify the attorney being served

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Dated: September 23, 1999

  
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